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REPORTS

NOTES OF THE WEEK

Adolescent Offenders

The prevalence of crime among adolescents is a constant subject of comment and discussion, and rightly so because not only are offences numerous but they are also serious. Many questions are asked, such as, have the juvenile courts failed to prevent young offenders from continuing in crime, are the various institutions for dealing with juveniles and adolescents in need of drastic improvement, and is probation used too freely by some courts and too little by others?

The adolescent of today certainly seems to be rather different from the adolescent of the previous generation and to indulge in crimes that often suggest the methods of an adult determined criminal. One suggestion to account in part for this is that young people now mature at an earlier age than formerly.

A leading article in *The Times* of January 20, commenting on the report of the Chief Medical Officer of the Ministry of Education for 1956 and 1957, refers to the fact that increased nutrition, perhaps sometimes excessive, may lead to early maturity, and goes on "What is required from the long-term point of view is research into the optimum diet for providing the optimum rate of growth. In the shorter run an investigation is needed into the relationship of this earlier maturation of children and juvenile delinquency. There is a growing body of evidence to suggest that this early attainment of physical maturity is often not accompanied by corresponding intellectual and emotional development."

Courts For Adolescents

Those who advocate the extension of the age for the juvenile court jurisdiction may find here some support for their contention that many of the adolescents who now have to appear in the ordinary magistrates' courts are fitter subjects for the juvenile court. We do not think that the juvenile courts are suitable to deal with boys of 17 years and upwards charged with crimes involving sometimes violence and brutality and who sometimes behave like determined young criminals. Indeed some of those who now appear in the juvenile courts might be more impressed by the more formal procedure and atmosphere of the ordinary criminal courts.

If anything at all is to be done by way of treating adolescents as not fit subjects for the ordinary criminal courts it might be better done by the creation of separate courts for those who are at least 17 but under 21 or some less age. We are not advocating this change but simply suggesting it as a matter worth discussion. We are stimulated to this by reading a pamphlet published by the Institute for the Study and Treatment of Delinquency entitled *Courts For Adolescents*. The author, Dr. Hermann Mannheim, has an international reputation as a writer and lecturer on criminology, and this small pamphlet is the result of much research as well as wide knowledge of current thought and literature on criminology and kindred subjects added to considerable experience and observation of courts and institutions.

Dr. Mannheim is of opinion that under existing conditions with these adolescents being dealt with in the ordinary criminal courts, their emotional, intellectual and other needs cannot be fully cared for, and that the fault lies not with Judges and magistrates but in the system. However, he is not dogmatic about it, being evidently more anxious to place facts and arguments on both sides before his readers than to impress his own opinions upon them. The pamphlet contains some information about the position in Western Germany and Sweden and deals in considerable detail with what Dr. Mannheim saw for himself and learned from discussions during a brief visit to the United States and Canada. An appendix contains observations on American and Canadian juvenile courts.

Dr. Mannheim comes to the conclusion that there is a strong case for establishing special courts for boys between 17 and 21 as parts of the ordinary adult criminal courts. This is his opinion formed after his visits to New York and Chicago and the impression he formed of the special courts. The reader of the pamphlet may or may not feel convinced, but at least he will have

placed before him facts that are new to him and which may help him form his own opinions.

Pedestrians' Rights on Zebra Crossings

Pedestrian crossings have no value—indeed they are a positive menace to the pedestrian — unless motorists observe strictly the requirement to give precedence to a pedestrian who is on the crossing before them. Courts can help in establishing the right of the pedestrian to the protection which the crossings should give by dealing adequately (not forgetting the power to disqualify) with drivers who do not play the game and commit offences against the regulations.

In the *Evening Argus*, Brighton, of January 10, we read of a woman who appeared in court on crutches to give evidence against a motorist whose car had hit her when she was on a pedestrian crossing. She was in hospital for a month. The driver in question was fined £4 for careless driving and £1 for failing to give precedence to the woman on the crossing. He could not properly complain that the penalties were unduly severe. A policeman gave evidence that after the accident the driver told him "I have just touched a woman with my car, *I thought she would wait for me*." In evidence the driver said that he slowed before reaching the crossing but the woman's leg was caught under his bumper. As reported this seems to have been a bad case of its kind. The driver's observation "I thought she would wait for me" shows an attitude of mind, all too typical of some drivers, which courts must do their best to discourage.

Disqualification for "Drunk in Charge"

When Parliament, by s. 9 of the Road Traffic Act, 1956, amended the law about compulsory disqualification for those convicted for the first time of being "drunk in charge" of motor vehicles it was certainly not intended that this effective and very appropriate penalty should never be imposed for such an offence. The offence is one which can vary greatly in gravity according to the circumstances in which it is committed, and we would suggest that the question of whether disqualification should be ordered should depend far more on the circumstances of the offence than on extraneous circumstances relating to the offender's employment, his responsibility for providing for people dependent upon him and so on.

We make these comments on reading a report in the *Western Mail* of January 10, 1959, of the case of a young man of 19 who was fined £25, with £9 13*s*. 6*d*. costs after pleading guilty to such an offence. He was not disqualified after his advocate had pleaded that it would cause hardship to his widowed mother.

He first attracted the attention of the police by the difficulty he had in getting his car into gear outside a public house. It would seem, therefore, that he was in grave peril of being charged with attempting to drive the car, conviction for which would have involved disqualification in the absence of special reasons. His condition was such that at one stage he fell on his face on the bonnet of the car, he failed all the tests to which he was subjected by the police doctor, he appeared to fall asleep while standing up waiting for transport to the police station and in the station he fell into a drunken stupor.

He was a man who probably was not guilty of the graver offence of driving whilst drunk only because, when he got into his car, he was too drunk to be able to manipulate the gears properly. A worse case of "drunk in charge" it is difficult to imagine and the roads could well do without the presence on them, until he has had time to reflect on the error of his ways, of a young man who is prepared to consider driving a car when in such a condition.

The Law Didn't Bother Him

Flagrant disregard of requirements which affect all those who wish to drive motor vehicles on the roads can never be tolerated, and a defendant who is serving at present in the Royal Pioneer Corps has to find a total of £9 10*s*. in fines from his pay to remind him that the law applies to him as it does to other people. He was found riding a 1938 motor-cycle with no silencer, inefficient brakes, no excise licence and no insurance policy. He told the policeman who stopped him that *he didn't bother to renew the insurance policy* because he rode the machine only at week-ends and in a rural area. Although his licence was ordered to be endorsed he was not, apparently, disqualified as the report (*Western Mail*, January 10) is silent on this point. We assume, therefore, that no particular consideration was given, at least in open court, to this matter although a period of disqualification might well have served to emphasize to the defendant that his casual attitude to our road traffic laws could not be allowed, even in a rural area.

Probation Officers' Salaries

Anyone who is considering the choice of a career naturally takes into account the nature of the work and the remuneration it offers. How much weight is attached to each of these factors depends on whether, to put it bluntly, the work or the money is regarded as the main interest. Those who follow the arts may be content with little pecuniary reward, finding satisfaction in creative work, though a few may decide to turn their talent to commercial ends. Those who go into business may find opportunity for doing some good as well as making money, but mostly the principal object is to get on and become prosperous.

Besides these there are those whose main object in life is to help other people, and whose work is a vocation. No man enters upon a career as a minister of religion for its financial rewards: the minister is likely to be underpaid, and this he knows well enough when he makes his choice. So also many social workers in various fields are content to follow an occupation in which they realize they will not be paid as well as many others engaged in less exacting work, simply because the work itself is their main interest and because they have come to it with a sense of vocation.

Among the last class is the probation officer. Probation officers choose their calling because they are impelled by a desire to serve other people, not because they foresee a lucrative career or a comfortable occupation. It is because of this sense of vocation that they achieve so much success in their difficult and often discouraging work. They have never made any striking demands on the subject of salaries, but others interested in them and their work have from time to time pointed out that their position compared too unfavourably with that of many others doing less exacting work.

In the annual report of the Nottinghamshire probation committee, Mr. T. R. Fitzwalter Butler, the chairman, says the committee consider that the exploitation of vocation in the case of probation officers has continued far too long and that the committee have been forced into the rôle of very poor employers. We are sure that there has never been intentional "exploitation" of probation officers, but there is reason

to think that the time has come for some further revision of their salary scales. Mr. P. W. Paskell, principal probation officer for Nottinghamshire, also states that taking the country as a whole there is in the service a current disillusionment and disappointment that officers have still to face frustrating circumstances and such adverse financial conditions. If he is right, the service is likely to suffer, although, as Mr. Paskell says, there is no question of probation officers staging a strike or working to rule. Of course not, but it is as well to remember that a man's sense of vocation is not impaired by his having a salary sufficient to free him from financial worries.

Rehearing After Matrimonial Appeal

Although in delivering judgment in the case of *Claxton* v. *Claxton* (*The Times*, January 20) the President said that this was not a matter upon which a general pronouncement could be made, the decision is of general importance to justices and their clerks when dealing with what may prove to be a difficult question. That question is whether and in what circumstances the judgments delivered in the Divisional Court on the hearing of an appeal in a matrimonial case should be made known to justices who have been ordered to rehear the case.

In this particular case the wife had appealed against the dismissal of her complaint and the Divisional Court had ordered a re-hearing.

In the course of his judgment Lord Merriman, P., said that upon the hearing of that appeal Stevenson, J., had stated in clear and unmistakable language, with which he agreed, that the observations made in the course of the judgments were not intended to prejudice the rehearing of the case by the fresh panel of magistrates, who would reach their own conclusions on the evidence placed before them. At the rehearing when it was sought to read the transcripts of the judgments on the hearing of the appeal the magistrates took the view that they ought to hear the evidence without hearing what the Divisional Court had said as to the inferences to be drawn from particular facts. There was, said the President, the widest distinction between a judgment of the Divisional Court which indicated that magistrates had gone wrong on a point of law and one which held that they had gone wrong solely in drawing inferences of fact. He pointed out that where the question was one of law only it was the duty of magistrates to see in what respects they had misdirected themselves on the law so that they might avoid a repetition, and went on to discuss the circumstances in which though the case was not one of law only, it might be right for magistrates to let in what the Divisional Court has said. In the present case the matter had been one of pure fact and the magistrates had been right in their decision to approach the rehearing without having the transcripts of the judgments read to them.

Maintenance Orders Act, 1958

This Act and the Magistrates' Courts (Maintenance Orders Act, 1958) Rules, 1959 (S.I. No. 3 (L.1)) come into operation on February 16, and the Home Office has issued a Circular No. 6/1959 dated January 9, to clerks to justices. The circular occupies more than 16 foolscap pages discussing in considerable detail the effect of the various provisions of the statute and the procedure prescribed by the rules, and an appendix contains a list of towns with district registries, indicating also which towns have divorce jurisdiction.

The provisions of the new statute affect the work of magistrates' courts in a number of ways, the procedure is sometimes complicated and a study of the circular and of the explanatory booklet for employers dealing with attachment of earnings orders will prove of considerable assistance.

We think it worthwhile to call particular attention to one change in the law, because to overlook it might have serious consequences. The maximum term of imprisonment that may be imposed in default of payment of arrears under maintenance orders is no longer three months, but six weeks.

Works Exit Patrols

A correspondent who goes home daily along Purley Way sends us a suggestion which may be worth consideration. We understand that Purley Way is a trunk road, which in the morning and evening peak hours carries an almost unbroken stream of traffic. At intervals there are turnings giving access to factory premises, and an increasing number of the employees go to and from work in their own cars: this increases the pressure on the trunk road. At some places there are roundabouts which our correspondent tells us are inadequate; we have read elsewhere that the advisers of local authorities and of the Minister of Transport and Civil Aviation are coming more and more to the conclusion that roundabouts do not provide a universal cure, for the difficulty of intersecting or cross traffic. It seems that on Purley Way the police have not been able to provide enough men to hold up the traffic at these intersections. Some of the firms, with premises beside or near the trunk road, have offered to organize a system of patrols, and to provide the necessary staff, so that contributory traffic can join the main stream in an orderly fashion, but the police object to this, as being an encroachment on their functions. Our information is that on a typical evening at 5.50 *p.m.* the flow of traffic is reasonably constant and there is no undue difficulty about fitting in to it, but that five minutes later the vehicles and pedestrians emerging from the side roads constitute a serious impediment, with resulting danger. The orthodox answer may be that working hours should be staggered, but there have been difficulties with the staffs concerned. One firm which tried to introduce working hours according to which its employees would be released five minutes earlier than usual, with a compensating surrender of five minutes from their luncheon interval, was obliged to abandon the scheme because five *per cent.* of the men involved would not co-operate. It may be that a solution for each road of the sort has to be found independently, and that there is no universal remedy.

Our correspondent's suggestion is that a system should be arranged, if necessary with legislative backing on the lines of the school crossing patrols. The firms with employees would benefit and would probably pay the trifling cost involved, and there would be some saving in police manpower.

Street Works Costs

The Departmental Committee on Building Byelaws, in Cd. 9213 of 1918, stated that two-thirds of the complaints made to them in evidence had related to the cost of private street works, which had nothing whatever to do with byelaws with respect to new streets and buildings. In the intervening 40 years causes of complaint have perhaps grown fewer; at any rate we hear less of them. After the first world war the Ministry of Health resumed attempts which had been made by the Local Government Board before the war, to secure the adoption of standard specifications for different types of streets. These attempts had some success, but probably a more important cause of reduction in the volume of public complaint was that,

after the first spate of post-war sales of small plots of land to ex-Service men, there were fewer small owners having their own houses built. The increase in building costs, and the tendency to rely on local authorities more and more for small houses, meant that, where a street was laid out as a means of access to dwelling-houses not yet built, the operation was rather more likely to be carried out by a builder, who either had capital or could call on capital. It had thus come about, even between the wars, that a higher proportion of streets laid out were, at the same time, constructed within the meaning of s. 157 of the Public Health Act, 1875; this in turn led to some tendency for the developing owners of estates not merely to construct the streets, but also to accept responsibility for making them up under s. 150 of the Public Health Act, 1875, or under the Private Street Works Act, 1892. Similarly it became less usual for the person who wished to own his own house to buy a plot and build upon it; houses as well as streets would be put there by the developing owner. Of course the person who bought the house had to pay for making up the street to a stage at which the local authority would accept it, just as he had done under the older system, but his proportion of what had already been done was charged in the price of the house so that it was not recognized as a separate burden.

The growth of town and country planning, by the making of schemes and interim development orders between the wars, and then the enactment of the Town and Country Planning Act, 1943, must have almost put an end to the possibility of selling a plot beside a street which had been laid out but not constructed, still less made up—a practice which had meant at one time that the purchasers of plots (without proper advice) often found themselves saddled with a crippling liability for street works. It was because after the second world war developing owners were not thought to have done enough to remedy the evil, that the New Streets Act, 1951, was passed.

There remain a number of streets laid out and perhaps constructed in earlier years but never made up for adoption by the local authority, and from time to time these streets cause trouble. It is natural that an owner-occupier who bought his house beside an unadopted street between the wars, and was prepared to pay (say) £100 for street works, should feel aggrieved today when he finds, after doing without the street works, that he now has to pay twice or thrice what he expected. Knowledge that £100, if he had set it aside when he bought the house, would by now have doubled itself at compound interest, will not remove his sense of grievance. There is however, not much that he can do about it. A case was lately reported in the London newspapers in which the town council of Wimbledon had made up a secondary street, and the frontagers objected unsuccessfully before the magistrates to the standard at which it was made up. They called it a "dead man's land, which led from nowhere to nowhere"—and the street works cost £10,270.

In another southern borough, more or less at the same time, a case occurred in which one of our readers was consulted. Here there was a residential street which the town council were minded to make up; inquiry about the cost before they had given any formal notices showed that this was likely to be heavier than some of the residents were able to afford. At our informant's suggestion, the frontagers got together and agreed to do the work themselves. The result was that, for a capital cost just half what the council's officials had forecast, their contractor made up the street to a standard which was accepted by the council. Our correspondent suggests that other readers, consulted in such cases, may find it helpful to their clients to bear such a possibility in mind. The essential thing, in his view, is that there shall be at least one frontager, preferably such a person as the retired local government official who was his client in the case of which he tells us, who understands the matter and will take the lead.

THE POWERS AND DUTIES OF THE JUSTICES IN THE PROCEDURE FOR THE COMPULSORY CARE OF PERSONS SUFFERING FROM MENTAL ILLNESS OR DISORDER

By HENRY HARRIS

The liberty of the subject from the time of Magna Carta has been a cherished possession, not to be taken away without good cause. Society has always demanded that criminals should be liable to be deprived of their liberty, first as a punishment, secondly to protect the community, thirdly as a deterrent to others, and in modern times, as a concomitant of all three, there has been added a fourth, the reformation of the individual. It has also been necessary to deprive of their liberty, those members of the community who, unfortunately, were idiots, imbeciles, feeble-minded or of unsound mind and who were a danger to themselves or to others or were destitute, or in later years merely needed care and treatment. A child or young person may now be removed compulsorily from his parents, when because of neglect or ill-treatment or his own refractoriness he needs special care and training. The compulsory removal to hospital of a person suffering from an infectious disease may now be enforced, so also a person may by compulsion be removed from his home when because of infirmity or illness he is neglected and needs care and attention. In all these cases, the instrument of deprivation has been in the hands of the judicial officers of the Crown, *viz.*, the Judges or the justices of the peace.

It is of interest to recall how the justices, who are nowadays associated with the trial of offenders, and, incidentally, the adjudication of multitudinous other matters, came to be possessed of powers and duties in relation to matters in lunacy. From the time of Edward III, they had had certain judicial functions and from time to time enforcement of many laws, some exceedingly unpopular, *e.g.*, the fish laws of the Elizabethan period which made a penal offence the non-abstention from eating fish during Lent or on Fridays. During Elizabeth's reign the justices became virtually maids of all work, for, in addition to administering petty justice, they had to execute all the functions of local government, which included the administration and enforcement of the laws relating to the relief of the poor, for which purpose and for

other purposes too they were empowered to levy county rates. The control of wages and prices was placed in their hands and the granting of indentures as between masters and apprentices. They were required to maintain the roads and bridges, the prisons and workhouses, and they licensed the keepers of inns and alehouses. It seemed quite natural, therefore, that the justices' services should be called upon in matters of lunacy, and so in 1744 it was enacted that "Persons who, by lunacy or otherwise, are furiously mad or are so far disordered in their senses that they may be dangerous to be permitted to go abroad," might, on the order of two or more justices, "be apprehended and safely locked up in some secure place or chained for and during such time as the lunacy or madness shall continue." Nowadays, it would be regarded as intolerable that an Act, ostensibly for the purpose of taking charge of those who are mentally ill, should have as its preamble, as in fact the Act of 1744 had, "to make more effectual the laws relating to rogues, vagabonds and other idle and disorderly persons."

Although the 1744 Act dealt with dangerous lunatics only, it was the first time that legal authority was given for the removal of lunatics compulsorily from the community. It must frequently have happened, however, that lacking the diagnostic methods of the present day, and having regard to the indifference with which mentally afflicted persons were then treated, many such persons, inevitably, were committed to gaols or even hanged as criminals or committed to workhouses as being idle and disorderly. As for those of unsound mind at that period, other than those who came within the 1744 Act, they had to be cared for by relatives or in private madhouses.

During the latter half of the eighteenth century, public attention was focussed on the need for stricter control and inspection of the so-called "madhouses," many of which had by then acquired an unsavoury reputation, as a result of which by an Act of 1774, the justices (outside the London area) were empowered to license and visit them. From that time and throughout the nineteenth century, legislative expression was given to many social reforms, not the least being in regard to the care of lunatics. Special public asylums were established in 1808, of which the justices became the managers and visitors. These asylums were mainly for the reception of three classes of lunatic, *viz.*, the dangerous lunatics who came within the Act of 1744, criminal lunatics who had been dealt with under the Criminal Lunatics Act, 1800, and pauper lunatics who had been transferred by justices' warrant from the poor-houses. The justices were given power of discharge. By an Act of 1819, admission to a private licensed house or public asylum required for the first time, as a safeguard against the improper detention of sane persons, a certificate signed by a physician, surgeon or apothecary.

The Lunacy Act, 1890, consolidated all previous legislation on the subject and is still the basis of the present-day lunacy laws, amended as it is by the Mental Treatment Act, 1930, and the National Health Service Act, 1946. In the 1890 Act, as in previous Acts, an invidious distinction was drawn between those for whom payment was available for care and treatment and those who were regarded as *in forma pauperis*. This distinction was made manifest in the procedure for compulsory care. The procedure contained in s. 16, originally applied to paupers and dangerous lunatics only, and the officer responsible for initiating the requisite procedure was the relieving officer. That officer, having become *functus officio* at the demise of the poor law system, was replaced in 1948 by the duly authorized officer, and the section in its amended form provides a procedure capable of application to any class of person of unsound mind. Upon the latter officer devolves the duty of proceeding in regard to all persons of unsound mind who require to be taken charge of and detained under care and treatment, provided he is satisfied that, with regard to the person concerned, no private petition is to be presented under s. 4 or he is wandering at large. (Private petitions are now rarely presented since the establishment of the National Health Service in 1948, within which the mental hospitals are incorporated and care and treatment are free to all.) The duly authorized officer is required within three days of his becoming cognizant of a person alleged to be of unsound mind, to give notice to a justice. Thereafter, it seems clear from the section that the justice assumes the dominant rôle, for he has a duty to "call in" a medical practitioner and must examine the person concerned either in his own home or elsewhere and he may make such inquiries as he thinks advisable. If he is satisfied upon his examination or other proof that the person is of unsound mind and a proper person to be detained, he may make a summary order of reception in a mental hospital, subject to the proviso that the medical practitioner whom he has called in signs a medical certificate in the prescribed form. In the rare cases in which a private petition is presented under s. 4, two medical certificates are required and the justice to whom it is presented must be a judicial authority, being one of those appointed under the Lunacy Act each year by the whole body of justices as fit and proper persons to undertake the statutory duties imposed upon them. Orders resulting from the action of the duly authorized officer require only one medical certificate and that by the medical practitioner whom the justice has called in. The justice need not necessarily be a judicial authority. The judicial authority although appointed under the Lunacy Act are also required to receive and, if necessary, make orders upon petitions presented under the Mental Deficiency Acts, such orders being for the reception of defectives into institutions or for placing under guardianship. They also have certain duties under the latter Acts concerning the discharge of defectives, duties which they do not have under the Lunacy Act.

It would appear from the terms of the Bill published recently concerning mental health that the Government intend to adopt most of the recommendations of the Royal Commission, whose report was issued in May, 1957. A single Act will replace the Lunacy and the Mental Deficiency Acts, under which the use of compulsory care will be regulated. The present classifications of patients embodied in the latter Acts will be placed in the melting pot and re-moulded into three main groups, the procedure for care and treatment, compulsory or otherwise, being common to each group. A further result of the proposed implementation of the Commission's recommendations would be a severance of the long association the justices have had in the administration of the lunacy laws extending over 200 years. The judicial authority would be abolished and the participation of the justices in the procedure for admission to a mental hospital would cease. Paragraph 264 of the Commission's report states ". . . many patients and relatives no doubt do not understand or distinguish the different elements in the present procedures, but dislike and resent 'certification' as a whole. But all the same we think it is true that the justice is generally considered the central figure in the present procedures and that the fact that the patient's admission to hospital is 'ordered' by an authority, whose main function is the punishment of crime, has at least contributed to the much talked of 'stigma' of certification."

Experienced administrators of the lunacy laws may consider that when a person is to be deprived of his liberty without his positive consent, notwithstanding that it is being suggested the deprivation is for his own good, there should be some direct intervention by a judicial officer of the Crown. The "stigma" to which the Commission's report refers may not attach to certification so much as to the old-fashioned notion that to have a lunatic in the family is a slur on the family escutcheon. In any case, to regard the procedure for admission to a mental hospital as a stigma is in fact groundless. No mention is made in the Lunacy Act to certification; true, as a condition precedent to the justices' order, the medical practitioner gives his certificate, but that in itself does not stigmatize any more than the numerous other certificates that he issues daily. The stated objection in the Commission's report that the justices are mainly associated with the punishment of crime, takes no account of the many other matters on which they adjudicate, *e.g.*, matrimonial, guardianship, affiliation, consents to marry and adoption of children, as well as the licensing of public houses, theatres, cinemas and other places of public entertainment.

The procedure contemplated by the Bill for admission into a mental hospital or for community care is on the application by a relative (or by a mental welfare officer acting in place of a relative), supported by two medical recommendations, which procedure shall apply when the patient's nearest relative makes no objection, but if he does wish to object the issue is to be decided by the county court. No facilities are to be afforded to the patient himself who wishes the justification for the use of compulsory powers to be considered by an independent authority, until after he has been admitted to hospital or received into care and then he may appeal to one of the mental health review tribunals which are proposed to be constituted.

Before this Bill is passed by Parliament, serious consideration must be given to the question whether the reasons given by the Royal Commission for the exclusion of the justices in the procedure for the care and treatment of mental patients are sufficiently valid to justify a violation of the constitutional principle concerning the liberty of the subject, or whether, in furtherance of that principle, they enact that the procedure shall be under the aegis of a judicial officer as at present.

It is unfortunate that a section containing a procedure originally intended to apply to dangerous and pauper lunatics only, and involving the services of a justice as such and not one specially appointed a judicial authority, should be the one now almost entirely invoked when hospital or community care is "ordered." If Parliament can be induced to accept the principle that a judicial officer should continue to intervene on behalf of the State, notwithstanding the recommendation of the Royal Commission, then there is no more appropriate officer for the purpose than the justice selected by his fellow justices to be a judicial authority, provided he is known as such and not as a justice, and his investigation is conducted in a place other than the court-house.

The reception of a patient into a mental hospital, other than on a voluntary or temporary basis, would seem to require more formality than the mere presentation of an application with two recommendations. Indeed, a prior investigation by some independent authority is of paramount importance to the unfortunate patient who, by reason of his mental state, is neither capable of protecting his liberty nor of managing his personal affairs. There is not only the patient's mental condition and his attitude towards care and treatment to be considered, but also the attitude of the relatives, whether, for instance, the application is made under duress, emotional stress or misapprehension or prompted by a desire to divest themselves of a responsibility which they can or ought to bear themselves. A judicial investigation is essential to the medical staff of the hospital, the mental welfare officer and other persons concerned in the procedure, if only to guard against any unjust criticism or allegation of impropriety. Any recourse to a county court for the purpose of over-riding the unwillingness of a relative to give consent, as proposed in the Bill, would be as unnecessary as it would be inappropriate.

In *R.* v. *Whitfield* (1885) Q.B.D. 122, in which was reviewed the corresponding procedure to that contained in the Lunacy Act, 1890, s. 16, Lord Justice Lindley stated "In my opinion, proceedings of this kind cannot be too narrowly watched, and that not only magistrates and medical men, but also every one concerned in causing a person to be sent to a lunatic asylum, ought to be extremely careful to avoid even the appearance of haste or impropriety."

WEIGHTS AND MEASURES MATTERS

By J. A. O'KEEFE

Practitioners in weights and measures law, and in particular enforcement officers, may find something of interest in the two following points.

A "short-weight charter"?

The Pre-Packed Food (Weights and Measures: Marking) Regulations, 1957, essentially part of weights and measures law although for technical reasons made under the Food and Drugs Act, 1955, are important since they require, in general, the marking on the container of pre-packed food of a true statement of the minimum quantity of food inside. The Regulations (S.I. 1957, No. 1880) came into operation on January 1, 1958, in substitution for provisions contained in the Pre-Packed Food (Weights and Measures: Marking) Order, 1950. The offences set out in the regulations are absolute subject to the special defences therein. Broadly, so far as retailers of pre-packed food are concerned, the sale or having in possession for sale of pre-packed food not properly marked with the quantity statement is each an offence. A similar liability rests upon wholesale sellers in respect of the delivery of non-conforming packets. There are several controversial matters in connexion with the drafting of these regulations including the query as to whether they allow the procedure by the prosecutor of by-passing the first offender in favour of the person to whose act or default the offence was due on the one hand, and on the other hand the bringing in of such person by the first offender by way of defence, by the operation of s. 113 of the Food and Drugs Act, 1955. This query was raised in an article at 121 J.P.N. 823 where it was argued that the section had no application to the regulations.

Leaving that difficulty to that article, readers of this journal are invited to consider another change effected by the Board of Trade and which in a recent case led the learned stipendiary at Cardiff to describe, so it is reported, the provisions of the regulations as "a short-weight charter." Under the superseded order, whether the offence related to an overstatement of quantity or an omission to make a statement at all, his defence

(arts. 4 (1) (*c*) and 5 (1) (*b*)) in circumstances where the defendant had purchased the article from a trade supplier was limited to the following circumstances:—

(*a*) that he (the defendant) had purchased the food in the United Kingdom from a person carrying on the business of supplying food of that description and that it was packed then in the same container in which it was found at the time of the infringement and the container had not been opened since it was acquired from the supplier; and

(*b*) that the offending statement of quantity or the omission of a statement pertained at the time of purchase from the supplier, and

(*c*) that at the time of the infringement he (the defendant) had no reason to believe that the order was being infringed.

In connexion with this defence it should particularly be noticed that it was not available to the importer of a pre-packed article of food subsequently found to infringe the order, and secondly the defendant had positively to show that he had no reason to believe that the order was being infringed, and that meant that proof was required that the ordinary prudent care of a trader of the goods in question had been exercised to prevent the infringement. Very frequently offending goods in the hands of a retailer have passed through a number of wholesale dealings from the time they were, in the case of home-produced goods, packed and labelled or, in the case of imported goods, imported into this country. Under the old order, therefore, a burden of prudent care was placed upon each dealer from and including the retailer backwards, and even if the retailer and all intermediate dealers could raise a sound defence in the ultimate result either the home-packer (or labeller) or the importer was liable. This situation has been radically altered. The defences aforementioned have not been repeated. There is now, both as regards home-packed and imported foodstuffs, no need in relation to the defence for the retailer or any other dealer to show that he had no reason to believe that the regulation was being infringed and in the case of imported goods it is always a defence, even for the importer, to show that the inaccuracy was due to the act of some person over whom the defendant had no control. Provided he has not altered the package in any way, therefore, any dealer in imported pre-packed foodstuffs who bought the packet from another person has an absolute defence. There is, therefore, no control left over imported pre-packed foodstuffs in relation to these regulations. The reason for this drastic change being effected by the Board of Trade is not known. Instead of reproducing the defences in the old Order they have applied (reg. 5 (1) (iii)) an amended form of s. 12 (2) of the Sale of Food (Weights and Measures) Act, 1926. This contains in respect either of an inaccurate statement or an omitted statement two defences one of which is, in effect, that it is an absolute defence " if the defendant proves to the satisfaction of the court that such inaccuracy or omission . . . . was due to the action of some person over whom the defendant had no control . . . . ." This defence has received interpretation in its context in the Act of 1926, the most important case in point being *Trickers (Confectioners) Limited* v. *Barnes* [1955] 1 All E.R. 803, in which it was held that a retail baker " had no control " over a wholesale baker who supplied him with short-weight loaves of bread. Further, it held that in operating this defence it was not necessary that the defendant should prove the exercise of diligence, thus a failure to examine or check the goods which he bought from his supplier and subsequently put on sale was no bar to his succeeding in his defence.

Enforcing authorities, therefore, since January 1, last, have been unable effectively to operate the regulations in respect of imported pre-packed foods, and in respect of home-packed goods the only person, in fact, liable is the packer or labeller. Such control as is left is further bedevilled by the question as to whether the by-passing procedures of s. 113 of the Food and Drugs Act, 1955, apply. If they do, then the enforcing authority finding offending goods on a retailer's premises can institute proceedings directly against the only person who has no defence, namely the home-packer or labeller. If s. 113 cannot be applied then unless there is a sale by the home-packer or labeller within the area of the enforcing authority he cannot take any action at all under the regulations. Whether or not s. 113 applies, there remains, of course, the complete immunity of all dealers in imported pre-packed foodstuffs. There seems no point in perpetuating regulations which render themselves impotent, but because it is believed that the purpose of the regulations is of great importance for the protection of the public and the promotion of fair trading it is hoped that consideration will be given by the Board of Trade without delay completely to amend the regulations so that they are at least as effective and powerful as formerly they were.

It is submitted that the former defences should replace not only s. 12 (2) of the Sale of Food (Weights and Measures) Act, 1926, as applied, but also s. 115 of the Food and Drugs Act, 1955, also incorporated in the regulations.

A notice " served on or sent by registered post."

By virtue of s. 12 (6), Sale of Food (Weights and Measures) Act, 1926, the prosecutor of an offence by a retailer (except for obstructing or hindering an inspector in the exercise of his duties) under the Weights and Measures Acts, 1878–1926 shall not be instituted, *inter alia*, unless " within seven days after the alleged commission of the offence notice in writing of the date and nature of the offence has been *served on or sent by registered post to* the defendant . . ." First it may be noted that in calculating the period of seven days, the day of the offence is excluded (*Radcliffe* v. *Bartholomew* (1892) 56 J.P. 262; *Goldsmiths Co.* v. *West Metropolitan Rail Co.* (1904) 68 J.P. 41; *Stewart* v. *Chapman* (1951) 115 J.P. 473).

The meaning of the phrase has received judicial interpretation in respect of the words " served on or sent by registered post " in their context in s. 21 of the Road Traffic Act, 1930. In this connexion, the recent case of *Beer* v. *Davies* (1958) 122 J.P. 344; [1958] 2 All E.R. 255 held that the requirement of service was not complied with where the notice was despatched by registered post to the defendant's usual address but, he having gone on holiday and there being nobody at his home to take delivery, the notice was returned undelivered. The decision in this case that in the circumstances there had not been good service was an express application of the finding of the Court of Appeal in *R.* v. *County of London Quarter Sessions Appeals Committee, ex parte Rossi* (1956) 120 J.P. 239 ; [1956] 1 All E.R. 670, in interpretation of the words " give notice " in s. 3 (1) of the Summary Jurisdiction (Appeals) Act, 1933. The case of *Beer* v. *Davies* would appear to override the case of *Sandland* v. *Neale* (1955) 119 J.P. 583; [1955] 3 All E.R. 571, in which service by registered post to the home address of the defendant, who was known by the police to be lying in hospital at the time and who was not in a fit state to receive the notice personally, was held by the Divisional Court to be proper service; similarly affected or partially affected are previous findings in *Stanley* v. *Thomas* (1935) 103 J.P. 241 and *Stewart* v. *Chapman* (1951) 115 J.P. 473.

The result is that whereas before *Beer* v. *Davies* inspectors of weights and measures, if they did not serve the notice personally, despatched the notice to the defendant in such time that it would reach its destination taking the normal course of registered post, within the prescribed period (in accordance with the ruling as it

was understood in *Stewart* v. *Chapman*), now it seems clear that such latter course is not sufficient. Steps must be taken to ensure that the defendant personally receives the notice in the time allotted for service. This will mean personal service being undertaken wherever reasonably possible and before service by registered post is used a most careful inquiry into the likelihood of the defendant being in the position to receive the notice himself if it is posted to him.

LIABILITY FOR NON-REPAIR OF HIGHWAY

By LAWRENCE GRIFFITHS, B.A., *Barrister-at-Law*

One hundred and seventy years ago the case of *Russell* v. *Men of Devon* (1788) 2 T.R. 667, marked the recorded beginning of the common law doctrine of non-liability for failure to repair a highway. The basis of that decision was purely practical: the difficulty of giving and enforcing judgment against the inhabitants of the county, who were then responsible for the upkeep of such roads as there were.

Today the sound of the internal combustion engine is the pulse of the nation's economy, and 7,000,000 motors swarm along thousands of miles of roadway. Responsibility for highways has devolved from the inhabitants at large, first to the county surveyor and ultimately to local authorities.

Yet *Russell* v. *Men of Devon* remains unimpaired as the leading authority on repair of highways.

Its import can be stated quite briefly: a highway authority will not be held liable in civil proceedings if damage is caused by its failure to repair a road—provided it has done no positive act. In short, there is no civil liability for non-feasance. Through the years the doctrine has survived both scholarly criticism and judicial displeasure to carve its own well-defined channel in the common law, and, although anachronistic, its importance and practical application to modern conditions can hardly be underestimated.

The rule is simple. Moreover, the courts have adhered fairly strictly to its literal meaning, finding non-feasance where the authority has remained inactive. Thus failure to replace a fence after the removal of debris from the highway was held to be misfeasance, since the authority in question had performed a positive act in a careless manner. On the other hand, when an inspection cover became elevated as a result of constant wearing away of the surrounding road surface, the authority was not liable either for the cover (which was in good condition) or for the road, because they had performed no act of misfeasance.

One of the cases near the borderline is the Court of Appeal decision in *Newsome* v. *Darton U.D.C.* (1938) 102 J.P. 409; [1938] 3 All E.R. 93, in which the defendants in pursuance of their functions as sanitary authority had dug, and afterwards filled in, a trench in the road. This work was done without negligence, but the road afterwards subsided at that point.

Although it was not necessary to the decision, the Court decided that the defendants had been guilty of misfeasance. If, said the Judges, the authority interferes with the surface of the road, and that interference causes, albeit at a later date, subsidence, that subsidence must be regarded as part of the original interference. Thus even though the original act was not done negligently, and it was two years before the subsidence occurred, it was held that the accident was caused by misfeasance.

Interest centres chiefly, however, on the qualifications which have from time to time been imposed on the application of the doctrine.

Far and away the most important of these was given authoritative enunciation in *White* v. *Hindley Local Board* (1875) 39 J.P. 533. The plaintiff was riding his horse along the highway when the horse trod on a sewer grating which carried surface water to the sewer. The grid was defective and gave way, injuring the horse.

In a careful and lucid judgment, Blackburn, J., said that the defendants could not be held liable in their capacity as surveyors of the highway, since they had committed no positive act. The "non-feasance doctrine" did not, however, extend to their activities as owners of the sewers, of which this drain was a part: they were therefore liable in negligence for not repairing the grating.

The principle which emerged has never since been doubted: the non-feasance doctrine applies only to highway authorities acting as such. The modern council or corporation is responsible for a host of public services, and many of these are connected in some way with the highway. Only in the maintenance and repair of roads, however, can they claim immunity under this doctrine.

Perhaps the best modern example of this particular principle is to be found in the case of *Skilton* v. *Epsom and Ewell Urban District Council* (1936) 100 J.P. 231; [1936] 2 All E.R. 50. A traffic stud placed in the highway had become loose. On being run over by a car it shot out and struck a bicycle, overturning it and injuring the rider.

The Court of Appeal held that the stud had nothing to do with maintenance or repair—it was inserted under s. 48 of the Road Traffic Act, 1930, for the direction of traffic. In the words of Lord Justice Romer, "they (the defendants) have done something on the highway not for the purpose of maintaining it as a highway, but for some totally different purpose . . ." He concluded that the non-feasance rule was therefore not available, and that the council were liable in damages.

In one instance the immunity of the highway authorities has rather surprisingly been preserved in circumstances where it was quite open to the court to restrict it. There is nothing, the Court of Appeal declared in *Nash* v. *Rochford Rural District Council* (1917) 81 J.P. 57, to make a succeeding authority liable for the misfeasance of its predecessor. So an authority may persistently neglect a dangerous condition for which its predecessor would have been liable, and escape all liability.

It is interesting to note, however, that although the court in that case was considering a drain, no argument appears to have been addressed to the point that the current authority might have been liable for non-feasance. On the strength of *White's* case ordinary surface drains are part of the sewage functions of that authority, and it seems that the council might therefore have been liable for any negligence, whether non-feasance or otherwise, in respect of these sewage activities. There is nothing to show that *White's* case was even mentioned: an extraordinary omission, if that is so.

A decision along different lines appeared in 1944, *viz.*, *Drake* v. *Bedfordshire County Council* (1944) 108 J.P. 327; [1944] 1 All E.R. 633. A soldier named Drake was walking

along a footpath forming part of Watling Street at night, when he fell through a gap in some railings and was killed. His widow sued the Bedfordshire county council. They were the highway authority for that stretch of road until January, 1937, when under the Trunk Roads Act, 1936, it became vested, like other trunk roads, in the Minister of Transport. Under a subsequent agreement the county council became agents for the Minister, for the purposes of maintenance and repair of the road.

The Court (Cassels, J.,) decided that as contractors the council could not claim the protection of the non-feasance immunity. It covered only highway authorities: they were mere agents of the highway authority.

Substantial stretches of highway appear therefore to be outside the scope of the immunity, and these roads are set out in sch. 1 to the Trunk Roads Act, 1946.* As might be expected they comprise the country's major arterial routes. It is curious to reflect that the plaintiff injured by the state of a road is better off if, by chance, it happens to be a trunk road, since his action will probably lie for non-feasance.

The recent case of *Baxter* v. *Stockton-on-Tees Corporation* (1958) 122 J.P. 453; [1958] 2 All E.R. 675 serves as a reminder, however, that the historic immunity is substantially still unimpaired. The Court of Appeal, in a considered judgment, said that specific statutory provisions may give a cause of action for non-feasance in any particular case. But apart from such provisions the unhappy truth is that *Russell* v. *Men of Devon* rules us yet.

Property may be damaged, men and women injured, lives lost: the plaintiff who in civil proceedings seeks redress for neglect rather than for active misdoing is defeated *in limine* without any inquiry into the merits of his case.

* As amended by numerous S.I.'s.

CORPORATE PERSONALITY
(OR THE METAPHYSICS OF A LOCAL AUTHORITY)

By EDWARD S. WALKER, D.P.A. (Lond.)

From time to time difficulties arise in appreciating the concept of corporate or juristic personality. It is interesting, therefore, to consider this concept which goes back in Roman Law to at least A.D. 200: for we have it in Ulpian's Book on the Edict (Dig. 3, 4, 7, 1): "*Si quid universitati debetur singulis no debetur; nec quod debet universitas singuli debent.*"

A corporation is an *imperium in imperio.* Considered as a tangible fact, corporate personality is a fiction, a shade, a nonentity. A corporation aggregate or sole is only *in abstracto*—it is invisible and immortal and rests only in the intendment and the consideration of the law. This description is borne out by Coke, C.J., in *Sutton's Hospital Case* (1612) 10 Co. Rep. 1a, and Coke, C.J., confirmed his view two years later in 1614 in *Tipling* v. *Pexall* (1614) 2 Bulst. 233, when he observed: "Touching corporations, they are invisible, immortal and have no soul; and therefore no subpoena lies against them, because they have no conscience or soul. A corporation is a body aggregate. None creates souls but God, the King creates them and therefore they have no souls; they cannot appear in person, but by attorney."

In *Kyd on Corporations,* 13 (1793) a corporation aggregate was similarly defined as a collection of individuals united under one body under a special denomination, having perpetual succession under an artificial form and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued, of enjoying privileges and communities in common and of exercising a variety of political rights more or less extensive, according to the design of its institution or the powers conferred upon it, either at the time of its creation or at any time subsequent in its existence.

Other early definitions of corporations are:—

(i) *Fulmerston* v. *Steward* (1554) 1 Plowd. 101 at p. 102b, where it was held that a corporation aggregate has only one capacity, namely its corporate capacity; so that a conveyance to a corporation aggregate can only be made to it in its corporate capacity;

(ii) in 1691 by Holt, C.J. (Holt K.B. 168), as *ens civile,* a *corpus politicum,* a *collegium,* an *universitas,* a *jus habendi et agendi;*

(iii) *R.* v. *London Corporation* (1692) Skin. 310, where it is said to be an artificial body composed of divers constituent members like the human body and the ligaments of this body, political or artificial, are the franchises and liberties thereof which bind and unite all its members together, and the whole frame and essence of a corporation consists therein.

The essence of the notion of a juristic personality lies, then, in its abstraction; the intangibility of its reality; its being composed of a physical being through which it materializes its capacities and powers; but distinct from which it has a separate entity.

This is the important fact. The corporators of a corporation aggregate, or the one individual who is constituted a corporation sole, may from their association with the corporation have rights and privileges, and be under obligations and duties over and above those affecting the corporators in their private and personal capacity, but they get these rights, privileges, obligations and duties from the reflection of the corporation. They, individually, are not the corporation—they cannot exercise the corporate powers, enforce the corporate rights, or be responsible for the corporate deeds or misdeeds.

This is exemplified by the incorporation of municipal boroughs. Upon incorporation, the corporation of a borough is not the members of the council of the borough, but the mayor, aldermen and burgesses of the borough: *Holt's Case* (1676) 1 Freem. K.B. 441; and in the case of a city, the mayor, aldermen and citizens: *A.-G.* v. *Worcester Corporation* (1846) 1 Ph. 3, though the terms "burgesses" and "citizens" are in this context synonymous (Municipal Corporation's Act, 1882, c. 7 (1)).

Finally, the common law view of a juristic person is supported by statute law since the word "person" in a statute generally includes a person in law—and any Public Act coming into force after the operation of the Interpretation

Act, 1889 (52 & 53 Vict. c. 63) s. 19, which included the word "person" is deemed to mean, unless the specific contrary appears, any body of persons corporate or incorporate: subject to the proviso that a corporation cannot come within the term "person" when that term is used in a statute and that statute contains expressions that are repugnant to that construction: *Wills* v. *Tozer* (1904) 20 T.L.R. 700; 53 W.R. 74; 48 Sol. Jo. 564.

DEBATE ON THE STREET OFFENCES BILL

By J. W. Murray, Our Parliamentary Correspondent

The Street Offences Bill received a Second Reading by 235 to 88 votes in the House of Commons. It has now been committed to a standing committee.

Moving the Second Reading, the Secretary of State for the Home Department, Mr. R. A. Butler, said that he wished to make it clear that it was not the object of the Bill to make prostitution illegal, or to provide a cure for prostitution. The history of the world would show that to be impossible, at any rate by statute. The object of the Bill was to help clear the streets and, for that purpose, to make it possible to charge prostitutes who plied their trade in the streets and to stiffen the penalties against them. He acknowledged at the outset, as did the Wolfenden Report, that it would undoubtedly result in driving some of the trade underground, but he was convinced that in the long run it would mean that fewer young women would fall into that way of life, and that the example of both sexes would be less disgraceful and the temptation to them less flagrant than it was today.

The Bill followed exactly the recommendations of the Wolfenden Report on the subject of prostitution. It was an instrument designed, while clearing the streets to the maximum degree possible, at the same time to make absolutely sure that anyone apprehended or charged should be genuinely of the type whose activities the Government wished to check, namely, the prostitute who pursued her business in the streets and in other public places.

He accepted the Wolfenden Committee's proposal that before any woman were first charged with an offence she should have received, if possible, two police warnings or cautions. It was the intention of the Commissioner of Police to arrange that no woman should be charged for the first time with soliciting until she had been cautioned by a police officer on at least two separate occasions. In the course of giving those warnings, it was the intention of the Commissioner of Police that the woman should be asked if she were willing to allow her name and address to be sent to a suitable voluntary society and, if convenient, to call at the local police station to be seen by a woman police officer, who would help her with advice and offer to put her in touch with a welfare organization, if she agreed. They hoped that that might have some effect in redeeming the woman and getting her away from the trade. He did not propose that in the cautioning the woman should be asked to go inside a police station because that would result in the possible preferment of a criminal charge which could be used against the woman later in a possible trial. If the statute were so drawn as to make cautioning a constituent of the charge such a procedure might prejudice the woman if it meant, as must be so in such cases if she denied committing an offence, bringing her before the court. That, he believed, would defeat the whole object of the cautioning system.

Mr. Butler went on to say that subs. (1) of cl. 1 provided that "It shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution." That gave effect to the recommendations of the Wolfenden Committee relating to street offences, namely that they should be reformulated so as to eliminate the requirement to establish that the conduct of the prostitute caused annoyance to inhabitants, or residents, or passers-by. They did not think that individual citizens would be willing to give evidence of annoyance, any more than they had been in the past. From his experience and from what magistrates said, he had no doubt it was a dead letter, and he thought that in framing the law with the one change of leaving out the need to prove annoyance they were simply doing something which had been strongly recommended and which was in tune with what was practical at present.

Objection had been taken to the retention of the term "common prostitute," but that term had been part of the statute law since 1824. The Wolfenden Committee had emphasised that the use of that term would provide a valuable statutory protection for women who did not belong to that class, but who might, because of their behaviour, which was perfectly innocent, be wrongly suspected of doing so. To establish a charge under the Bill it would be necessary to satisfy the court that a woman was a common prostitute and that on the particular occasion she was loitering or soliciting for the purposes of prostitution. It would be necessary to prove both before the woman could be convicted.

It was very seldom indeed that a woman charged with soliciting disputed that she was a common prostitute. He was informed that during the past two years over 12,000 women were charged in the West End Central Division, of whom not one pleaded not guilty to the charge. It might be that some of those charged would, in future, because of the increased penalties, deny that they were common prostitutes, and, if so, that would have to be proved. He understood that the normal method of proving it would be to show that on recent occasions the woman charged had been seen soliciting and going off with men. There was no legal decision which established that previous convictions could be used to establish that a woman was a common prostitute, and he had to leave that as a matter which the courts must decide.

In reply to interventions, Mr. Butler said that he could not give a ruling on previous convictions. He could not say that on no occasion would a previous conviction come up; that must be a matter for the courts. It would not normally be the practice that cautions would be regarded as evidence. Again, he could not interfere with the rules of evidence of the court. The charge would have to be proved in relation to episodes and actions taken immediately prior to the charge being preferred.

In reply to interventions from Mr. Sydney Silverman (Nelson and Colne), Mr. Butler said he was perfectly well satisfied that the police were able to distinguish by the activities of a woman and by the evidence, of not only one policeman, but of two policemen, of what a woman was up to when they condemned her as a common prostitute and brought her before the court. He was satisfied that that could be carried out by the police in the way in which it had been carried out and that that was the fairest way of doing it.

Mr. Silverman said that Mr. Butler was saying that he relied confidently on a verdict not by the court, and not on evidence produced by the police, but by the police, who would decide whether a woman was a common prostitute and the courts would accept it when they said so.

Mr. Butler denied that. He said it depended entirely upon whether the court accepted the evidence put before it. He could not take the place of the magistrates or of the courts, but he was satisfied that the magistrates and the courts would know a common prostitute when they saw one on the evidence put forward to them.

There were exclamations of surprise from the Opposition benches and Mr. Butler went on to say that he was satisfied from the investigations he had made that the evidence put forward to them would be thorough. It did not depend upon the police alone. It depended upon the evidence put forward by the police to the court. That was the way it had been done and that was the way in which, with even more care than before, it would be done in the future.

Mr. Niall Macdermot (Lewisham, N.) then intervened to say that he agreed that the annoyance provision was a dead letter, because the decision was taken on what was known to be unsatisfactory evidence. But the Bill made no provision for any different kind of evidence for proving that a woman was a common prostitute. Now, however, it was proposed that she should be sent to gaol. Surely, the Secretary of State realized that in future the issue was likely to be contested.

Mr. Butler replied that he realized that the issue was contentious. Anybody who had been working in courts dealing with those matters must know that to prove annoyance was a dead letter. Therefore, he believed that the new system would work as well as the old and, by removing something which was not operating, would be a clearer and better way of operating the law.

So far as it was right and proper for the criminal law to deal with men who pestered women for immoral purposes, the necessary provision existed in s. 32 of the Sexual Offences Act, 1956, as consolidated, which stated: "It is an offence for a man

persistently to solicit or importune in a public place for immoral purposes." That offence carried severe penalties; six months' imprisonment on summary conviction and two years on indictment. It had been a matter which had concerned him from the start that the Government should not appear simply to be legislating against women, but that they should keep legislation against men in existence. It would be seen that the penalties against men were heavier than those proposed in the Bill against women and that the definition was also broader.

The fact was that the women were easily identifiable; the men were not. The public nuisance was created by those women who followed prostitution for profit as a regular calling and a way of life, who frequented the streets to find customers by loitering or soliciting for that purpose. But the man who was the prostitute's customer did not ordinarily need to loiter or solicit; he appeared on the scene and was then gone.

It had been suggested that the Bill should require a court, before sentencing a person convicted of soliciting for the first or second time, to remand an offender for social or medical inquiries unless it was satisfied that it would serve no useful purpose. That went slightly beyond the recommendations of the Wolfenden Committee, who did not recommend that the court should be required to remand such cases but merely proposed that, in order to emphasise the court's existing power, that power should be re-enacted in the Bill. The Government considered that the courts already had that power and it would be unnecessary and wrong to re-enact it. Courts freely exercised their existing power when they considered that it could usefully be done. In fact, he had ascertained that it was the general practice of Metropolitan magistrates, when a woman was so convicted for the first time to arrange for her to see the probation officer, and, if the probation officer reported that there was some prospect that she was likely to give up that way of life, to remand her so that further inquiries could be made. It would be quite wrong to fetter the discretion of the courts by requiring them absolutely to adopt that course in all cases in the absence of special reasons to the contrary. Since remand would often have to be in custody, it would involve an unjustifiable deprivation of liberty.

On the question of penalties, it was generally agreed that there was a clear case for increasing substantially the penalties fixed more than 100 years ago. Some people had suggested that though an increase in fines was justified, imprisonment was disproportionate to the gravity of that offence. But, on reflection, they had to deal with a very serious nuisance, and they accepted the view that imprisonment was necessary as a final sanction and deterrent following upon the advice of the Wolfenden Committee itself. He shared the hope of the Wolfenden Committee that the possibility of imprisonment might make some courts more anxious to try, and some women more anxious to try, and some women more willing to accept probation.

Clause 2 provided heavier punishment for offences of allowing prostitutes and disorderly persons to be in refreshment houses and for kindred offences. The clause was not based on the Wolfenden Committee's recommendations, but arose from strong representations made to the Secretary of State about nuisances created, particularly in Stepney. Evidently, all-night cafés frequented by prostitutes needed dealing with most strenuously. In particular, the clause allowed the court to disqualify premises or a licence-holder on a first—not only on a second or subsequent—conviction.

Clause 3 gave effect to the view expressed by three women members of the Wolfenden Committee that the existing penalty of two years' imprisonment for living on immoral earnings was inadequate, at least to deal with the worst cases of large-scale exploitation of prostitution. They made the point that such increase might also serve to offset the danger that increased penalties for street offences might encourage a new growth of what were called "middlemen."

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Parker, C.J., Donovan and Ashworth, JJ.)

JONES v. EALING BOROUGH COUNCIL

January 20, 1959

Town and Country Planning—Enforcement notice—Quashing by magistrates—"Person aggrieved"—Right of planning authority to appeal to quarter sessions—No order to pay costs—No burden placed on local authority—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 23 (5).

CASE STATED by Middlesex quarter sessions appeal committee.

Ealing borough council, the planning authority, served on John James Jones, the occupier of a site at Ealing used for the parking of motor vehicles, an enforcement notice under s. 23 of the Town and Country Planning Act, 1947, relating to that site. The allegation of the planning authority was that its use was contrary to planning control. The occupier appealed against the notice to Brentford magistrates' court, and contended that the use was a use before the appointed day, and that, therefore, no planning permission was required. The justices held that the use was not a new use, but one which existed before planning control, and, accordingly, they quashed the enforcement notice. The planning authority appealed to quarter sessions, where a preliminary objection was taken on behalf of the occupier that quarter sessions had no jurisdiction to hear the appeal. Quarter sessions held that they had jurisdiction and allowed the appeal. The occupier appealed to the Divisional Court, and the question was whether the appeal committee's decision that they had jurisdiction to hear the appeal was correct in law.

By s. 23 (5) of the Town and Country Planning Act, 1947, "Any person aggrieved by a decision of a court of summary jurisdiction under the last foregoing subsection may appeal against the decision to a court of quarter sessions."

Held: that, assuming that the words "any person" in subs. (5) could include a local planning authority, the authority did not become a "person aggrieved" within the meaning of the subsection merely because it was disappointed by or annoyed at a decision, or because it had been frustrated in the performance of one of its public duties; a local planning authority would become a "person aggrieved" if costs had been awarded against it or if the result of the decision had been to put some burden upon it; as no consideration of that kind arose in the present case, the appeal committee were wrong in holding that they had jurisdiction to hear the appeal, and the occupier's appeal must be allowed.

Counsel: *Brendan Shaw*, for the appellant occupier; *W. G. Wingate*, for the respondent authority.

Solicitors: *A. V. Hawkins & Co.*, Harrow; *E. J. Cope Brown*, Town Clerk, Ealing.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* HUNTINGDON JUSTICES. *Ex parte* SIMPKIN & COOMBES

January 19, 1959

Magistrates—Committal to quarter sessions for sentence—Entry in register—Date of offence omitted—Wrong statute stated——Order that entry be quashed—Duty of clerk to magistrates to make new entry and transmit to quarter sessions—Magistrates' Courts Act, 1952 (15 *and* 16 *Geo.* 6 *and* 1 *Eliz.* 2, *c.* 55), *s.* 29—*Magistrates' Courts Rules*, 1952 (*S.I.* 1952, *No.* 2190), *r.* 54.

MOTION for order of *certiorari*.

The applicants, John Simpkin and Charles Eton Coombes, were charged on two informations, the first of which alleged the larceny of a motor spare wheel and tyre, and the second the receiving of the wheel and tyre. The informations were heard at Huntingdon magistrates' court on July 20, 1958, when the justices dismissed the first information and convicted on the second. The justices ordered that the applicants be committed to Huntingdonshire quarter sessions for sentence. The entry in the register, which under r. 54 of the Magistrates' Courts Rules, 1952, it was the duty of the clerk of the justices to make, was correct in respect of the adjudication on the information for larceny, but on the information for receiving in column five of form 117 provided for the date, the word "ditto" was entered; under "Nature of offence" were the words "received from some persons unknown a Bedford lorry spare wheel complete with tyre" of a certain size, "knowing the same to have been stolen"; and the minute of adjudication was "committed to quarter sessions for sentence in accordance with s. 29 of the Criminal Justice Act, 1948." By r. 20 of the rules the clerk to the justices is required to send to the clerk of the peace a copy signed by the clerk of the justices' court of the minute or memorandum of the conviction entered in the register. In the present case he sent forward a copy of both adjudications, the acquittal and the conviction.

Application was made on behalf of the applicants for an order of *certiorari* to bring up and quash the record of the conviction on the ground that the record did not comply with r. 54, and leave to apply for such order was granted.

Held: (i) that, without deciding whether the nature of the offence had been sufficiently fully set out in the register, the entry in the register failed to comply with r. 54 because the date of the offence had not been set out and the wrong statute had been cited, and, therefore, the entry must be quashed and the copy which was sent forward to quarter sessions amounted to a nullity; (ii) that it became the duty of the clerk of the justices, having struck out the original entry, to make a new and proper entry and to forward a copy of that entry to quarter sessions, who would then be in a position to adjudicate, but it was not necessary that there should be any order of *mandamus* directing the clerk to do this, as he could act in pursuance of his statutory duty.

Counsel: *Joseph Yahuda*, for the applicants; *W. H. Hughes*, for the respondent justices.

Solicitors: *Edward Davis Nelson & Co.*; *Peacock & Goddard*, for *Hunnybun & Sons*, Huntingdon.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* LIVERPOOL JUSTICES. *Ex parte* WILLOCK
January 16, 1959

Adoption—Male adopter of female child—Court to be satisfied of special circumstances justifying order as an exceptional measure—Appointment of guardian ad litem—Duty of exhaustive investigation and laying all possible information before court—Adoption Act, 1950 (14 *Geo.* 6, *c.* 26), *s.* 2 (2) *—Adoption of Children* (*Summary Jurisdiction*) *Rules*, 1949–1952, *r.* 7, *r.* 9.

MOTION for order of *certiorari*.

In 1952 a daughter Ann, was born to one Hazel Willock, the daughter of Mrs. Elizabeth Hale Willock. The child was brought up by her mother and grandmother in Liverpool until April, 1957, when the mother went to live with a man named Leigh and took the child with her. In October, 1957, the mother and Leigh married, but on March 12, 1958, the mother died. Two days later, Leigh gave notice to the welfare authority that he intended to apply to adopt the child, who continued to reside with him. About the same time the grandmother applied for legal aid in order to enable her to take proceedings to have the child made a ward of court. The local authority was appointed guardian *ad litem* of the child. On June 12, 1958, a report was submitted to the justices by a child welfare officer in which it was stated: "The natural grandmother seems not always to be clear as to the parentage of the infant, and has on a number of occasions picked up the infant from school and removed her to another part of the country. These happenings occurred while the mother of the infant was still alive, and they seem to have rather upset the infant, who is now very frightened of her natural relations, and if she sees them, or thinks she sees them, she runs into the house and hides." The grandmother had, in fact, been to see the child welfare officer and clearly conveyed to him that she would like the custody of the child and that she considered Leigh was unsuitable. The officer had also been informed that the grandmother was consulting a solicitor for the purpose. None of these matters, however, was mentioned in the report.

By s. 2 (2) of the Adoption Act, 1950: "An adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order." By r. 7 of the Adoption of Children (Summary Jurisdiction) Rules, 1949: "It shall be the duty of the guardian *ad litem* to investigate as fully as possible all circumstances relevant to the proposed adoption with a view to safeguarding the interests of the infant before the court, and to make a report to the court for that purpose . . ."

On June 16, 1958, Liverpool juvenile court made an adoption order in favour of Leigh. Leave was obtained on behalf of the grandmother to apply for an order of *certiorari* to bring up and quash that order on the ground that the justices had failed to have due and proper regard to s. 2 (2) of the Act of 1950 in making it. The justices did not put in any affidavit.

Held: that *certiorari* must issue as, in the absence of any affidavit from the justices, and having regard to the fact that in the order which they made they did not draw attention to any special circumstances, the court was bound to infer that they had omitted to consider the provisions of s. 2 (2), and (without expressly deciding the point), possibly, on the further ground that the report by the child welfare officer was not in any sense a full report. Further, if a full report had been put in, the justices might well have considered that under r. 9 (as amended by the Adoption of Children (Summary Jurisdiction) Rules, 1952), the application should have been served on the grandmother.

Counsel: *Bickford Smith*, for the applicant; *Glyn Burrell*, for the respondents.

Solicitors: *Helder Roberts & Co.*, for *John A. Behn, Twyford & Reece*, Liverpool; *Thomas Alker*, Town Clerk, Liverpool.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

GRANTS FOR 33 HISTORIC BUILDINGS

The Minister of Works has announced another 33 grants towards the preservation of historic buildings in England, Wales, and Scotland.

Since their formation the Historic Buildings Councils have considered 2,707 applications for aid. The number of buildings for which owners have accepted assistance has reached 600, the aggregate value of grants being a little over £2 million. A condition attached to every grant is that the public shall be given reasonable opportunity to view the building.

LOCAL GOVERNMENT ACT, 1958

Local Government Commission for Wales

Mr. Henry Brooke, Minister of Housing and Local Government and Minister for Welsh Affairs, has announced in a Parliamentary reply the names of five members of the Local Government Commission for Wales which is to be set up under the Local Government Act, 1958. They are:

Chairman: Sir Guildhaume Myrddin-Evans, K.C.M.G., C.B.; deputy chairman: Sir Emrys Evans, M.A., B.Litt.; members: Professor C. E. Gittins (formerly director of education for Monmouthshire.); Mr. William Jones, O.B.E. (clerk of Anglesey county council and clerk of the peace); Mrs. Janet Morgan.

Sir Emrys Evans and Mr. William Jones are Welsh-speaking. All the appointments are part-time. The Act allows of the appointment of two further members.

NATIONAL INSURANCE BILL

The National Insurance Bill extends the existing flat-rate National Insurance Scheme by providing, for employed persons —and not for the self-employed—a system of contributions graduated according to earnings, with related graduated additions to retirement pensions. Employees with equivalent occupational pension rights may be contracted out of this graduated part of the scheme. The onus of applying for contracting out is on the employer who must satisfy a registrar established by the Bill that the occupational scheme provides at least equivalent pension benefits as specified in the Bill.

The Bill follows very closely the proposals in the White Paper "Provision for Old Age" reviewed at p. 750 of our last year's volume and is therefore open to similar criticisms as those which were made against the original proposals. There is, however, some modification in the basis of the contributions from the National Exchequer to the new scheme but without affecting the weekly contribution rates. Detailed provision is made about graduated contributions. The remuneration on which they are to be calculated is, in general, the same as that which ranks for deduction of income tax under the P.A.Y.E. system. The present flat-rate National Insurance contributions will be replaced, from a date to be decided after the Bill has been passed, by contributions specified in the Bill, together with graduated contributions of 4¼ *per cent.* each by employer and employee on weekly earnings between £9 and £15.

The graduated benefit will normally take the form of an increase of the main retirement pension, and will in general be payable at the same ages and on the same conditions. For instance it will depend on retirement and will be subject to an earnings rule. The amount of the graduated pension will depend on the total amount contributed by way of graduated contributions.

As under the White Paper proposals the Bill provides for no increase in the present flat-rate pensions so National Assistance will continue to be a permanent feature of the social security

system and, if as is felt in many quarters, the present total rate of pension and national assistance is not adequate to meet needs the only remedy will be an increase in National Assistance rates. There is, however, one important new provision in the Bill which was not contemplated in the White Paper. This improves the increments which insured persons can earn on their flat-rate retirement pensions by postponing retirement. At present, retirement pension is increased by 1*s.* 6*d.* a week for each 25 contributions. This scale will be altered to 1*s.* for each 12 contributions paid after a date to be appointed by the Minister. A wife receiving pension by virtue of her husband's insurance will receive 6*d.* a week for each 12 contributions paid by her husband after they have both reached pensionable age (compared with 1*s.* a week for 25 contributions at present). This means that a single man remaining at work until the age of 70 will be entitled to an increase of 21*s.* in his basic pension instead of 15*s.* at present and a married man will be entitled to an increase of 31*s.* 6*d.* instead of 25*s.* at present.

1958 ROAD TRAFFIC CENSUS RESULTS

The number of motor vehicles counted on trunk and class I roads in England and Wales during the traffic census in the week ended August 17, 1958, was 14 *per cent.* greater than in the corresponding week in 1957.

Private cars showed an increase of 17 *per cent.* and heavy goods vehicles an increase of six *per cent.* The number of buses and coaches was about the same as in 1956 and 1957.

During the week it is estimated that about 720 million vehicle miles were travelled by all types of vehicles. Some 48 *per cent.* of this travel was on urban roads and 52 *per cent.* on rural roads. Trunk roads carried 43 *per cent.* of the total travel (311 million vehicle miles) although they comprise only 30 *per cent.* of the total mileage of trunk and class I roads. About 17 *per cent.* of the total travel for the week occurred on the Saturday.

On weekdays 65 *per cent.* of the travel was by private car on urban and rural roads with a higher proportion on rural than on urban roads; goods traffic accounted for about 23 *per cent.* of the total on weekdays. On Sunday nearly 80 *per cent.* of the travel was by private car and over 90 *per cent.* by the various classes of passenger vehicles.

The amounts of travel varied in different parts of the country ranging from six *per cent.* of the total in midland division to 19 *per cent.* of the total in north-eastern. The largest percentage increase over 1957 occurred in south-eastern division (17 *per cent.*) and the smallest in south-western division (10 *per cent.*).

LOANS SANCTIONED—NINE MONTHS TO DECEMBER 31, 1958

In the year 1957–58 the Minister of Housing and Local Government sanctioned loans to local authorities in England and Wales to a total of £466 million. In three-quarters of the current financial year the total has reached £316 million, less by £38 million than the corresponding figure a year ago.

Purposes	*Three quarters to December 31*	
	1957	1958
	£	£
Housing (Land, dwellings, roads, sewers, etc.)	171	139
Advances and Grants under Housing and S.D.A. Acts	49	37
	220	176
Sewerage, sewage disposal and water supplies	38	39
Education	67	69
Miscellaneous	29	32
	354	316

Housing has begun to pick up a little from the large reductions of the previous quarters, but the cost of capital financing remains high, and must enforce caution. In the year 1955–56 authority was issued to raise loans to a total of £319 million for house building and for making advances and grants: it does not seem that the comparable figure for 1958–59 is likely to exceed £260 million.

Figures for the other services are not notably different from those of the previous period.

THE WEEK IN PARLIAMENT

From J. W. Murray, Our Lobby Correspondent

LEGAL AID

At question time in the Commons, Mr. D. Chapman (Northfield) asked the Attorney-General whether he was aware that under the Legal Aid and Advice Act people of slender means were being assessed as able to pay sums they could not afford; and when he proposed to amend the Act and its regulations so as at least to revise the figures for disposable income and disposable capital to allow for the fall in the value of money in the last 10 years.

The Attorney-General replied that the assessment was made by the National Assistance Board in accordance with the regulations now in force. The Government were committed to introducing ss. 5 and 7 of the Legal Aid and Advice Act during this and the next financial year. Once the scheme had been launched the Lord Chancellor would see what could be done about the financial provisions governing the rate of contribution of a person seeking legal aid.

HOMOSEXUAL OFFENCES

Mr. K. Younger (Grimsby) asked the Secretary of State what steps he was taking to give effect to the recommendation of the Committee on Homosexual Offences and Prostitution that, except for indecent assaults, the prosecution of any homosexual offence more than 12 months old be barred by statute.

Mr. Butler replied that while he did not propose at present to introduce legislation to implement that recommendation, he had no doubt that chief constables had taken note of it.

Mr. Younger then asked what steps the Secretary of State was taking to ensure that persons complaining to the police about alleged blackmail in respect of homosexual practices received adequate proctection against prosecution in respect of those practices.

Mr. Butler replied that it was a matter for the discretion of chief officers of police, who would have taken note of the Committee's views, whether proceedings should be taken in such cases. He had no reason to think that such proceedings were other than rare.

CROWN PRIVILEGE

Mr. A. A. Marlowe (Hove) asked the Attorney-General whether his attention had been drawn to the recent observations of the Court of Appeal in relation to the exercise of Crown Privilege in respect of the production of documents in litigation; and whether, since it was undesirable that the good faith of Ministers exercising that jurisdiction should be called in question, he would appoint an *ad hoc* committee of Ministers and High Court Judges to make recommendations with regard to the law and practice on the subject.

Replying in the negative, the Attorney-General, Sir Reginald Manningham-Buller, said he assumed that Mr. Marlowe was referring to the case of *Auten* v. *Rayner*, in which the Secretary of State objected in the public interest to the production of reports made by a police officer to his superiors, and communications passing between police forces in connexion with an investigation into an alleged criminal offence. The enforcement of the criminal law would be seriously impeded if the production of such documents could be compelled.

The objection was challenged by the plaintiff on a number of grounds, all of which were rejected by the Court of Appeal in a considered judgment which expressed no dissatisfaction with the existing law and practice. In particular, the Court ruled that there were no grounds for suspecting the Secretary of State of bias, and pointed out how extravagant it would be to suppose that a Minister in the Secretary of State's position would be in the least disabled or disqualified from giving proper consideration to the question whether it was in the public interest that the documents should be produced. In those circumstances, he did not consider that there was any need for a further review of the position.

ANNUAL REPORTS, ETC.

CUMBERLAND FINANCES, 1957–58

The loan debt of Cumberland county council was less in each of the two years 1943–44 and 1944–45 than it was in 1889–90—a particularly noteworthy achievement when allowance is made for the fall in the value of money over this period. Changes in social outlook and policies are also reflected in the trend of loan debt: thus in the period between the two world wars there was little change in the total outstanding which was of the order of £250,000. Since 1945 however debt has risen steadily from £42,000 to £3,683,000, chiefly on account of increased expenditure on the education service. Average rate of interest paid during the year was 4¼ *per cent.*

These and many other interesting facts are given in the annual summary of Cumberland finances published by county finance committee chairman F. G. Gaskarth and county treasurer John Watson, F.S.A.A., F.I.M.T.A.

Precepts for the year totalled 15*s.* 8*d.*, gross expenditure totalling close on £6 million of which 23 *per cent.* was met by rates. Actual results for the year closely followed the budget and the various committees are congratulated on the accuracy of their estimates. The actual surplus was larger than estimated by some £32,000, due principally to receipt of additional rate moneys for 1956–57 arising out of the revaluation of Crown property.

Fund balances amounted to £360,000, excluding about £198,000 for plant and stocks. A penny rate produced £7,400.

Total rates levied in the county districts varied from 23*s.* 3*d.* in Whitehaven borough to 17*s.* 4*d.* in Border rural district. On average rates in the rural districts were 2*s.* 7*d.* less than in the urban areas.

SURREY PROBATION COMMITTEE

The increased use of probation is gratifying as showing the faith of the courts in the work of the probation officers, but Brigadier A. C. C. Willway, chairman of the Surrey probation committee, says in the annual report for 1958 that the committee was alarmed to find that the increasing use of the service was developing at such a rate that there was serious danger of inefficiency as a result of the burden being placed upon it. It appeared desirable, in order to reduce excessive case loads, that four additional probation officers should be appointed, but various economies and expenditure were considered necessary. In all the committee spent £2,000 less than had been intended. This was done by deferring the opening of a new probation office, deferring the provision of a new motor car and reducing the number of additional probation officers by two.

An innovation in the clerical side of the work was the installation of two recording machines at Wallington and Guildford. The experiment has proved a success. Officers are able to use these machines as opportunity arises, often out of office hours, and the typists can type back at their convenience, when the officer is out visiting or engaged in court duty. On October 1, approximately half the persons on probation or under supervision were in the age groups 14–17 and 17–21. Male cases rose from 1,152 to 1,270, about 12 *per cent.*, while the number of those under the supervision of women officers rose from 359 to 375, approximately 4·5 *per cent.* It does not appear that there has been a corresponding increase in the use of probation, and it is suggested that possibly an increased use of detention centres is relieving the probation officers to some extent. The report expresses regret that there is no compulsory after-care following detention.

For some time it has been comparatively easy to find employment for probationers or persons on licence but, says Brigadier Willway, this state of affairs has now ceased. There has been a fall in employment generally and officers have to do a great deal more to find work for probationers. Taking a man to half a dozen prospective employers and discussing the position with them may occupy a whole day.

There was a striking reduction in the number of matrimonial cases in which reconciliation was attempted. There was a notable increase in the number of inquiries made into the background of offenders. Until a few years ago such inquiries in respect of adults were always exceeded by those in respect of juveniles but this is no longer so and the figures for 1958 were 1,548 adults, 1,209 juveniles.

BUCKINGHAMSHIRE WEIGHTS AND MEASURES DEPARTMENT

The report of Mr. W. A. Davenport, chief inspector to the Buckinghamshire county council, contains all the usual statistical information and a good deal of interesting comment. Just 1,000 years ago, he says, King Edgar succeeded to the throne of England and during his reign the first important law insisting on the uniformity of weights and measures throughout the realm was passed. A law of King Canute also decreed, "And let weights and measures be carefully rectified and every species of injustice abstained from." The Act of 1878 repeated that the same weights and measures shall be used throughout the United Kingdom. On the question of penalties Mr. Davenport compares the maximum fine that can be imposed today for using an unstamped weighing or measuring instrument with the minimum fine of 40*s.* a thousand years ago which an offender risked for selling about 1¼ *cwt.* of wool below the controlled price.

There is some shrewd and amusing comment on the methods of self-service stores. Mr. Davenport recognizes their advantages to the public but is critical of the way in which some foods prepacked by the vendors are presented to the customers, and he asks whether what he calls the hidden margin of profit is so essential? "How many cellophane or polythene bags full, apparently to bursting, with sweets, nuts, sprouts, fruit and tomatoes, all resembling pounds, will, on inspection, prove to be only 15 *oz.* or less?" Mr. Davenport preferred to stick to the pound as the ordinary standard of weight, and holds that departure from it must result in detriment to the public. Further, he dislikes such a description as "tinned peaches" when it is applied to a tin containing a considerable quantity of liquid, and thinks the proper description would be peaches in syrup, so that the purchaser will realize that the declared weight was not that of the solid fruit alone. He pays tribute to the work of the Fruit and Vegetable Canners' Association and says that whereas the law has provided for the compulsory declaration of quantity, which is sometimes hazardous and seldom helpful to the purchaser, industry has in this instance provided a purely voluntary system to achieve the ultimate purpose, namely standard quantities, consistently filled, in containers of honest and reasonable dimensions.

Sixty-seven thousand four hundred and eighty-one articles of food sold in terms of weight or measure were checked, consisting of loaves of bread, butcher's meat, milk and a great variety of pre-packed foodstuffs. Only 1·62 *per cent.* were found to be deficient in weight or measure.

The report refers to the peculiar problems of the coal merchant, particularly in relation to labour. On the whole, it is said, particularly in towns, the trade has had to depend on the rejects from other employment; men who seem to have no desire to acquire special skill. Such staff only too easily become a liability to their employers, who are obliged to retain them for want of an alternative. Possible improved methods of delivery which would be more convenient and less susceptible to fraud are discussed. However, this report states that out of 12,082 bags and loads of coal and other solid fuel examined (a sample representing thousands of tons delivered to the consumer), only two *per cent.* of coal and less than four *per cent.* of other solid fuels were found to be deficient. The report goes on: "Since experience shows that most bags and loads classed as correct are slightly overweight, it is obvious that the majority of the coal merchants in this county give away considerably more fuel in overweight than is gained by the few who deliver short, and that the public are well served by these tradesmen, who are so often regarded with suspicion."

This is one of the reports that might make quite interesting reading to many members of the general public. As Mr. Davenport says, "Annual reports such as this, while they necessarily contain much statistical and other dry matter which cannot be expected to make agreeable reading do, at least, provide an opportunity for the head of a department to outline his work for the information of new county councillors. They can also, I feel sure, help those councillors who are not members of the general purposes committee to keep in touch with the department's activities; and if any of the echoes are heard further afield —in commerce, for instance—so much the better."

REVIEWS

Rayden's Practice and Law in the Divorce Division. Supplement to Seventh Edition. By Joseph Jackson, M.A., LL.B. (Cantab.), LL.M. (Lond.), Barrister-at-Law, and D. H. Colgate, LL.B. (Lond.) of the Probate and Divorce Registry. London: Butterworth & Co. (Publishers) Ltd. Price 12s. 6d., postage 6d. extra. Combined price of main work and supplement £6 5s., postage 2s. 6d. extra.

The seventh edition of *Rayden* stated the law as on October 1, 1957. This supplement brings it up to date as on August 1, 1958. It consists of the usual convenient noter-up followed by three appendices. The noter-up includes a new chapter XVIII which deals fully with the Maintenance Agreements Act, 1957, and the Matrimonial Causes (Maintenance Agreements) Rules, 1957. The first appendix includes two new statutes: The Marriage Acts Amendment Act, 1958, which came into operation on January 1, 1959, and the Divorce (Insanity and Desertion) Act, 1958, which came into force on July 23, 1958. Appendix 2 consists of the Matrimonial Causes (Maintenance Agreements) Rules, 1957. These were made after the main volume had gone to press, the statute itself having been referred to in the main volume. Appendix 3 includes three important statutes not yet in operation. These are the Matrimonial Causes (Property and Maintenance) Act, 1958, the Maintenance Orders Act, 1958, and the Matrimonial Proceedings (Children) Act, 1958. To distinguish them they are printed on pink paper. A cautionary note has been inserted in the noter-up at the beginning of every chapter or section which will be substantially affected when these statutes are brought into operation.

The large number of new cases cited, quite apart from new legislation, makes this supplement indispensable to all users of the main volume.

The Enforcement of Planning Control. By Douglas Frank assisted by Guy Seward. London: The Estates Gazette, Ltd., Price 32s. 6d. net.

There is no dearth of assistance from textbook writers in the task of applying the Town and Country Planning Act, 1947, and the Acts amending it. The textbooks necessarily deal with enforcement of planning control amongst other matters but, so far as we know, the work now before us is the first which has been directed exclusively to the topic of enforcement. The learned authors of the book state in the preface that it is not their purpose to debate undecided questions. There are plenty of such questions, as can be seen in our own Practical Points and from discussion in some of our contemporaries. What they have set out to do is to collect the statutory provisions and decided cases dealing with enforcement. The confusion which has arisen in applying the short enactments on the subject is illustrated by the lamentable sequence of decisions mentioned in the preface. If the decision in *Francis* v. *Yiewsley and West Drayton Urban District Council* (1958) 122 J.P. 31; [1957] 3 All E.R. 529 has done something to straighten out the law and secure what most people would consider justice, there are (as the preface remarks) other questions remaining. It is part of the difficulty of such a subject that decisions are occurring all the time. The preface was written in February last, and duly refers to *Francis* v. *Yiewsley, supra,* but there have since been the decisions in *Eastbourne Corporation* v. *Fortes Ice Cream Parlour* (1958) 122 J.P. 333; [1958] 2 All E.R. 276; *Fyson* v. *Buckinghamshire County Council* (1958) 122 J.P. 333; [1958] 2 All E.R. 286; *Rigden* v. *Whitstable Urban District Council* (1958) 122 J.P. 445; [1958] 2 All E.R. 730; and, above all, *A.-G. ex rel. Egham Urban District Council* v. *Smith* (1958) 122 J.P. 367; [1958] 2 All E.R. 557.

This cannot be helped. Within the limits they have set themselves, and up to the date of the completion of the book, the learned authors have given everything about enforcement which is needed by the local government official who has to deal with planning, and by the solicitor and surveyor in private practice. It is more important to satisfy the needs of private practitioners in a field like this than of public officials, because in the nature of things the public official gains more constant experience, and has access to information which may not get into the law reports or other sources generally accessible. We have, therefore, looked at the book particularly from the point of view of the solicitor in private practice. It begins wisely with an explanation of what is meant by development, and of the statutory provisions and statutory instruments which determine when permission is or is not required. In a sense this is not part of "enforcement," but it is essential that those concerned shall understand what is meant by the conception of development, which may at times seem arbitrary.

The nature of operations which constitute development and the highly important topic of "material change of use" are briefly, but adequately, explained in this portion of the book. So is conditional permission, and there is a cross reference to a later chapter where half-a-dozen special cases of development are explained.

This primary explanation of the meaning of development leads to considering what types of development can be the subject of an enforcement notice, and this to discussion of the enforcement notice itself. The remedies of the private person are set out clearly, and then the methods open to the planning authority for making enforcement effective. This part of the book is of very great importance, to those who have to advise property owners and others about seeking permission for development, or coping with the situation which arises where the planning authority consider that there has been some breach of law which ought to be remedied, and serve an enforcement notice accordingly.

The appendices comprise several pages of specimen forms, and notes of the Minister's decisions. Finally comes the text of the most important relevant statutory provisions and statutory instruments.

Although the expository portion of the book comprises no more than 76 pages, and the extracts and other reference matter nearly 200 further pages, it would be a mistake to suppose that the practitioner can as conveniently get what he wants elsewhere. He can, of course, find it, but the expository pages will save him much time, particularly in searching through judgments of the court, and for members of either of the professions concerned (who are possibly more familiar with other branches of property law than with this new type of control) it will certainly be useful to have all the decisions and the subordinate legislation collected, as they stood in the early part of this year. In connexion with decisions, however, we feel obliged to call attention to one serious flaw. The table of cases at the beginning of the book does not give a full apparatus of reference, for those decisions which are to be found in several reports. Those which are to be found in P. & C.R. alone are left undated, so that the user of the book has to think back, in order to determine whether a case was decided before or after another reported elsewhere, while decisions of 1957 which are given in several of the recognized reports are provided with no reference except the W.L.R. This is a fault to which, when it occurred, we have constantly drawn attention in reviewing works produced by other firms, some of whom (we are glad to say) have taken note of our remarks and enlarged their references. If the present book goes into a new edition, as we certainly expect, we hope that Estates Gazette, Ltd., will also adopt the practice of established publishers of law books, and supply readers with full references.

Paterson's Licensing Acts. Sixty-seventh Edition. By F. Morton Smith, B.A. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. Price 70s. net, postage 2s. extra.

The general scope of *Paterson* is so well known that a reviewer need say no more, and should say no less, than that it is the complete guide to licensing law. Inns, public houses, off-licensed shops, billiards halls, cinemas, theatres, music halls, dance halls, every kind of premises in which there is carried on an activity for which a justices' licence of some description is required, are *Paterson's* raw material.

The relevant statutes are set out in chronological order, with annotations so complete that it is seldom necessary to pursue any topic elsewhere; and we always are pleased to find here new statutory instruments relating to licensing which otherwise would have eluded us.

This is the thirteenth edition for which Mr. Morton Smith, B.A., clerk to the justices of Newcastle-upon-Tyne, has had editorial responsibility, and it worthily upholds his reputation for careful editing.

This edition of the work is of particular interest in that it gives revised precedents of licences for theatres, music and dancing, and cinematograph entertainments, to which are attached "model"

conditions, respectively 56, 30 and 47 in number, which seem to us to be exceedingly well drafted and apt to be included, in whole or in part, as here drafted or suitably adapted, in licences of these kinds. We commend these model conditions to any licensing authority that may be engaged in re-drafting the common-form conditions attached to cinematograph licences, in particular, in consequence of the coming into force of the Cinematograph (Safety) Regulations, 1955, with their emphasis on securing the greatest practicable degree of public safety.

The Law of Defamation. By Richard O'Sullivan and Roland Brown. London: Sweet & Maxwell, Ltd. Price 25s. net.

This is intended as an introductory book, primarily for students. The learned authors have edited the current edition of *Gatley*, and of course do not seek in 180 pages to compete with that or other major works—they remark in the preface upon the absence of an introductory book, and have set out to provide it.

Essentially, libel and slander depend upon the common law, but there have been about a dozen statutes dealing with particular aspects, culminating in the Defamation Act, 1952. The first part of the book explains the cause of action beginning with a definition of defamation generally, and expounding the difference between libel and slander. Part II deals with defences and remedies, beginning with justification, and continuing with privilege in its various aspects. The relevant statutes are collected in an appendix. Particular attention may be drawn to chapter 10 upon fair comment, which demolishes some popular misconceptions and expounds the rather unilluminating phrase, "the rolled up plea."

The treatment of statements in discharge of a public or private duty (forming part of the chapter upon qualified privilege) may be of particular interest to local government officers.

On the whole we think this is an excellent little book for what it sets out to be, namely, a student's introduction to the topic. It comprises 150 pages of narrative followed by the excerpts already mentioned from the statutes, and within those 150 pages it contrives to tell the budding solicitor what are the things he must bear in mind in advising the client who has suffered defamation or is alleged to have defamed another person.

A Guide to Auditing. By W. T. Dent, F.C.A. London: Gee & Co. (Publishers) Ltd. Price 21s.

This modest little book should be useful alike for practising accountants and accountancy students. The language is simple but accuracy is not sacrificed to simplicity. The author has a happy knack of introducing interesting examples, and explaining away complexities, which will undoubtedly leave the reader with a better understanding of the subject.

Auditing is so much a part of the accountancy student's normal experience that it is not altogether surprising that as an examination subject it is almost always underrated, and the author's warning against this error contained in the first chapter is timely.

He refers to the benefits arising from the Cheques Act, 1957, and the complications from the auditor's viewpoint: one feels a note of regret at the passing of a period during which the auditor could place reliance upon copy receipt forms as evidence of payments received.

Separate chapters are devoted to the Verification and Valuation of Assets, and Verification of Liabilities. We are tempted to ask whether the definition of goodwill is absolutely accurate: we would have been inclined to think that an "average" business would possess some goodwill.

The chapter on internal check and audit will do much to eliminate any confusion between these terms which exist in the minds of some students. The author refers to the valuable function which the internal auditor can perform in relation to the organization and provision of up to date information for management. The relationship of the internal with the external auditor is also clearly explained.

The legal aspects of auditing are discussed in chapter VIII, the more important sections of the Companies Act, 1948, being reproduced in full: reference is also made to other important statutes. In the chapter on case law the author has grouped decisions on similar subjects, and has shown the tendency towards a more conservative approach to the definition of profits. The apparent conflict of decisions is shown to be part of the history of this development.

There is no reference to electronics in the chapter which deals with Mechanized Systems: but the techniques of auditing are admirably explained in terms similar to those employed by the recent Chartered Accountants' Research.

The author has included an excellent review of the various types of investigation which an auditor may be called upon to perform, and sets out generally the form of report, and extent of the auditor's liability in relation to investigations.

Altogether this is an essentially readable book which will undoubtedly add to the author's reputation.

THE BEST PEOPLE

(*Continued from p. 78, ante*)

"Fame is the spur that the clear spirit doth raise
(That last infirmity of noble mind)
To scorn delights, and live laborious days."

Thus John Milton in Lycidas (1637); it is typical of his age and outlook that, while the poet in him recognizes the desire for renown, for significance among one's fellows, as a natural instinct and an attribute of the "clear spirit" and "noble mind," the Puritan in him should still regard that instinct and that attribute as an "infirmity." If it is such, it is an infirmity of which men are free. A Cincinnatus, called from his plough to lead his fellow-citizens against the common enemy, who snatches victory from the jaws of defeat, and then renounces dictatorship and civic titles to return to the simple life of a private farmer, is rare in the annals of history. If he scorns the delights of pomp and circumstance for himself, his wife may not be so self-effacing; and one or both of them, we may be sure, will crave honour for their issue. If "fame is the spur," the hereditary principle is the whip that drives men on "to live laborious days."

The observer of human nature should not allow himself to be deceived by any affectation of indifference towards temporal grandeur among those who call themselves democrats. No one on earth gets so worked up to enthusiasm at the opportunity of becoming acquainted with a real lord, or the prospect (however remote) of marrying a daughter into a titled family, as your self-made American industrialist and the matron of his house. The cause is not far to seek. The so-called classless democracy of the United States has brought up its citizens to believe that money can buy anything, from an oilfield in Iraq to a castle in the Highlands, from a newspaper-combine to the Governorship of a State. If political power is theirs for the asking, why should they deny themselves its trappings, though shorn, in our modern political system, of most of its power?

The strength of the British system consists, to some extent, in this—that while, during the past century, the peerage has been continually replenished from the ranks of the commoners, the political power of the House of Lords has steadily declined. Two Parliament Acts, in the last 58 years, have deprived the Peers of all control over the national finances, and at the same time have reduced to one year the period during which any Bill, passed through all its stages in the Commons, may be effectively delayed. Even the hereditary principle, sacrosanct since feudal times, was partially renounced in the last century for the benefit of the Lords of Appeal; and the recent Life Peerages Act has extended the exceptions and admitted women to the Second Chamber on the same terms as men. "The Trojan mare," as one newspaper put it, "has got through the Portcullis"; and the pressure of public opinion may be expected, as time

goes on, to reduce still further the privileges of heredity in favour of eminence achieved in public life by persons "whose grandsire none remembereth." Thus another political revolution has been bloodlessly accomplished.

This present generation has seen many changes. When H. H. Asquith, the father of the Parliament Act, 1911, was granted the dignity of an Earldom in 1925, the *Daily News* (as it then was), a stronghold of liberal radicalism, declared patriarchally that it would not covet anything that was its neighbour's—"neither his *Ox*-ford nor his *As*-quith." Revelations about the alleged traffic in honours under the Government of his former colleague, David Lloyd George, for a time brought the phrase "political and public services" into disrepute. That sort of thing, it may be hoped, is past history. The Inter-Party Conference of 1947 and 1948, and debates on the so-called "Reform of the House of Lords," have been conducted in a spirit of good-natured wit, banter and near-hilarity; the subject bids fair to becoming a national joke. But that, in a way, it was already, 75 years ago, when Gilbert and Sullivan put *Iolanthe* on the stage at the Savoy:

> "And while the House of Peers withholds
> Its legislative hand,
> And noble statesmen do not itch
> To interfere with matters which
> They do not understand,
> As bright will shine Great Britain's rays
> As in King George's glorious days!"

Strephon, the Arcadian shepherd, is going into Parliament, and his protectress, the Fairy Queen, threatens the assembled Peers that he will reform their House with a vengeance:

> "Peers shall teem in Christendom,
> And a Duke's exalted station
> Be attainable by Com-
> Petitive examination."

Yet, behind the fun and games, the structure of the hierarchy is upheld by a meticulous attention to protocol in matters of style, title and address. The ordinary person who has to approach a Peer of the Realm, or any member of his family, must make his way cautiously through a social morass where pitfalls are numerous and traps await the unwary at every turn. It is not merely a matter of realizing the distinction in the mode of address between "His Grace the Duke of Markshire," "The Most Noble the Marquess of Blackacre" and "The Right Honourable the Earl of Redfarm" or "The Right Honourable the Viscount Thatch." One must also remember that a Baron (though the history-books are full of his doings) is never addressed as such, but as "The Right Honourable the Lord Such-and-Such"; that though all the sons and daughters of a living Peer, in that capacity, are commoners, the eldest son, by courtesy, is called by the title of his father's second peerage (if any); thus, the eldest son of the Duke of Markshire "commonly known as "The Marquess of Markton," or the eldest son of The Marquess of Blackacre, "commonly known as Viscount Black," may stand for and be elected to a seat in the House of Commons. Nor is that all. The *younger* sons of Dukes and Marquesses, by courtesy, are entitled to use the prefix "Lord" before one of their christian names; and *all* the daughters of Dukes, Marquesses and Earls are entitled similarly to style themselves "Lady." The *younger* sons of Earls, and *all* the children of Viscounts and Barons, use the prefix "The Honourable" before their christian names. All this is excessively complicated; it gives satisfaction to many, and does nobody any harm.

It may be noted, in conclusion, that the haughty behaviour of the *parvenu* is by no means a new subject for ridicule in our own age; it was satirized, in the palmy days of Louis XIV, by the mordant wit of Molière. *Le Bourgeois Gentilhomme* is a delightful comedy which shows up the extravagances of Monsieur Jourdain, a rich *bourgeois* who aspires to high rank and apes the manners of his social superiors. He engages a dancing master, a fencing instructor, a teacher of philosophy, a music-teacher and a court tailor, all of whom are called upon to exercise their arts for his benefit; and in all his conduct he is actuated by what (he fondly believes) is normally done by "persons of quality." He addresses his rustic servants as "lackeys," makes ridiculous advances to a lady of the aristocracy, insists on wearing his fine clothes on all sorts of unsuitable occasions, and has aspirations for marrying his daughter Lucile into a noble family. In the course of his instruction in philosophy he learns the difference between verse and prose; ordinary speech, he is told, is "prose"—even when he says to the servant—"Nicole, bring me my slippers and give me my nightcap!"—and he reflects with admiration that he has been speaking prose for 40 years without knowing it. Needless to say, his daughter has other ideas for her future than those which he has formed on her behalf; and, instead of espousing the marquis he has in mind, she persuades him to marry her to the "Grand Turk" who turns out, of course, to be her lover in disguise. The play is one of Molière's most witty works; but as a travesty of human vanity it was coldly received at Court, though it subsequently enjoyed a brilliant success on the stage.

A.L.P.

SHORTER NOTICES

Welfare Services Statistics, 1957–58

This ninth return of the Institute of Municipal Treasurers and Accountants follows the previous pattern, and gives details of the income and expenditure of authorities per 1,000 population in each branch of the service and costs per resident week, analysed under the main headings of cost. The summary is priced 3*s.* 6*d.*

Children Services Statistics, 1957–58.

This edition gives more comprehensive statistics than in the previous eight editions. It includes the costs per child week, costs per child in homes and nurseries analysed over the main headings of expenditure, average numbers of children in care, etc. The return shows that there was a slight reduction—from 62,046 children in care in 1956–57 to 57,694 in 1957–58. It is priced 3*s.* 6*d.*, and is obtainable from the Institute of Municipal Treasurers and Accountants.

Return of Fire Services Statistics, 1957–58.

This return follows the usual pattern and the statistics relate to all local authority fire brigades in England and Wales. It is priced 3s. 6d., and obtainable from the Institute of Municipal Treasurers and Accountants.

Police Force Statistics, 1957–58

The return shows that expenditure on the police increased from £60,945,364 to £64,162,008 during the year, and that for the first time, the cost per 1,000 population exceeded £1,000. The return is priced at 3*s.* 6*d.*, and is obtainable from the Institute of Municipal Treasurers and Accountants.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Paterson's Licensing Acts, 1959. Sixty-seventh edition. By F. Morton Smith. Butterworth & Co. (Publishers) Ltd. Price 70*s.*

Oke's Magisterial Formulist. Fifteenth edition. By J. P. Wilson. Butterworth & Co. (Publishers) Ltd. Price £7 7*s.*

Clarke Hall and Morrison's Law Relating to Children and Young Persons. First supplement to fifth edition. A. C. L. Morrison and L. G. Banwell. Butterworth & Co. (Publishers) Ltd.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1950—*Consent in respect of serial number application—Fresh application.*

A, a serving soldier and B, his wife, returned to this country from Germany some months ago bringing with them a child whom they wish to adopt. They resided for a while at X borough where they obtained a statement of application for an adoption order, consent forms, etc., and were allotted a serial number. The consent of the German mother has been obtained and in this consent the serial number allocated by X borough is referred to. The application was never signed and lodged with the X court and the parties have now taken up residence in my division. It follows therefore that no application has been made before the X court and that court has no jurisdiction.

I can quite easily get the applicants to complete a further application form and allocate a serial number for this division, but I am afraid that by doing so it will be necessary for a fresh consent to be obtained from the mother in Germany in order to comply with s. 4 (1) of the Adoption Act, 1950. It has been suggested that there might be some difficulty in getting the German mother to sign another consent and it is hoped the one bearing the X borough serial number could be used in my court. Can this be done? RELEC.

Answer.

The document is admissible as evidence of the consent only if it is distinguished therein in the prescribed manner, and the manner is prescribed in the Adoption Rules. The clerk is required to assign a serial number for the purpose of the proposed application, and in our opinion a serial number assigned by a different clerk for the purpose of a different application does not distinguish the document in the prescribed manner. We think the consent of the German mother should be sought in the form of a document bearing the serial number assigned by the clerk to the justices in whose court the application is to be heard.

2.—Criminal Law—*Committal for trial—Juveniles charged jointly with adult, and also charged separately with other offences.*

A, aged 17 years, is jointly charged with B, aged 14 years and C, aged 15 years, with breaking and entering.

B and C are separately charged with (i) larceny, and (ii) breaking and entering.

Assuming that the adult court commit all three defendants for trial on the charge which all three face jointly, can the adult court inquire into charges (i) and (ii), which B and C face, or must that inquiry be heard by a separately constituted juvenile court? ROMER.

Answer.

Section 46 of the Children and Young Persons Act, 1933, prohibits the hearing of charges against young persons by a magistrates' court which is not a juvenile court, unless they are charged jointly with an adult.

We are of the opinion that the offences with which B and C are separately charged must be heard by a properly constituted juvenile court, and not by the adult court.

3.—Game—*Poaching Act, 1862, s. 2—Forfeiture.*

I shall be obliged by your opinion as to the effect of s. 2 of the Poaching Prevention Act, 1862.

The section says that a person convicted under this section shall forfeit game, gun, parts of guns, nets and engines. It appears to me that this is mandatory and that the magistrates are obliged to declare these articles forfeit, as the word "shall" is used.

I shall however, be obliged if you will confirm that my reading of the Act is correct. GOMOR.

Answer.

We agree with our correspondent that the section is mandatory and that the magistrates have no discretion.

We dealt with a similar query at 122 J.P.N. 257.

4.—Land Charges Act, 1925—*Land already subject to notice to treat.*

A local authority is authorized to purchase compulsorily for the purposes of part V of the Housing Act, 1957, 11 houses, the owner of which is a recluse who has refused from the outset to communicate with anyone in connexion with the compulsory purchase order. Notice to treat has been served, the amount of compensation assessed by the Lands Tribunal and application made to the High Court for a direction of lodgment in accordance with the provisions of the Lands Clauses Consolidation Act, 1845, and the deed vesting the owner's estate in the local authority is ready for execution.

The notice to treat has been registered in the local land charges register, but it is my opinion that this is not a sufficient safeguard against the former owner's disposing of the houses without a prospective purchaser's being made aware of the compulsory acquisition by the local authority.

Could you please advise me:

1. Whether the notice to treat may also be registered in the land charges registry as an "estate contract" at this stage?

2. If not, when the vesting deed is executed should the entry in the local land charges register be cancelled?

3. What other steps, if any, can the local authority take to protect their estate and the interests of any future unsuspecting "purchaser"? AMOLE.

Answer.

1. We think this can be done, on the wording of the Land Charges Act, 1925, but we do not see any purpose in doing it.

2. Yes.

3. As at present advised, we do not see what is the danger to the local authority's interest. The former owner cannot confer upon a purchaser of his interest any higher right than he himself now possesses. As for the "unsuspecting purchaser," if he buys without employing a solicitor, who would as a matter of course inspect the register of local land charges (and surely nobody would buy eleven houses without doing so), why should the local authority concern themselves?

5.—Licensing—*Garden of licensed premises—Use for sale and consumption of intoxicating liquor.*

(*a*) Several licensed premises in this district have gardens which are used, in appropriate weather, by customers for the consumption of intoxicants. The liquor is either bought inside the premises and then taken out into the garden by the customer, or is bought through a window of the licensed premises which looks out on to the garden. Do you agree that since the sale of the liquor takes place inside the licensed premises, the garden is not a place used "mainly or solely for the sale and consumption of intoxicants," and therefore is not a "bar" within the meaning of the Licensing Act, 1953, and that therefore there is no offence committed where children under 14 are allowed in the garden during permitted hours?

(*b*) If the licensee employs a waiter to go around the customers in the garden, take their orders, obtain the liquor from the licensed premises and deliver it, and receive payment for it from the customers, is the position altered?

(*c*) It would appear that if the use of a waiter in the above circumstances involves "sale" in the garden, one of two offences might be committed (*a*) allowing children to be in the bar of licensed premises during permitted hours (assuming that the garden is in fact included in the premises for the purpose of licensing), or (*b*) selling and supplying intoxicants otherwise than on licensed premises (if the garden is not so included). OLIN.

Answer.

(*a*) We agree.

(*b*) In these conditions, we think that the place of sale is the garden, but, until we are told that it is not the case, we incline to the opinion that the garden is part of the licensed premises: *see* Customs and Excise Act, 1952, sch. 4, pt. VI, para 35.

(*c*) If the garden is not part of the licensed premises (which we think unlikely) an offence of selling intoxicating liquor on unlicensed premises is committed: an extremely technical offence. If the garden is part of the licensed premises an offence under s. 126 of the Licensing Act, 1953 (children prohibited from bars) will be committed only in circumstances that the garden is caught by the extended definition of "bar" contained in s. 165 (1) of the Licensing Act, 1953, *i.e.*, a place

exclusively or mainly used for the sale and consumption of intoxicating liquor. This is a question of fact. The words used by our correspondent to describe the gardens suggest that the sale and consumption of intoxicating liquor in the gardens is not the exclusive or main use of the gardens. We commend to our correspondent's notice notes of cases decided by quarter sessions on appeal from magistrates' courts at 75 J.P.N. 173 and 99 J.P.N. 801, and an article on "Children's Rooms in Improved Public-houses" at 99 J.P.N. 655.

6.—Magistrates—*Pleading guilty by post—Limited company as defendant—Who may sign written plea?*

We shall be glad if you will kindly let us know whether the procedure under s. 1 of the Magistrates' Courts Act, 1957, is available when the defendant is a limited company and if so whether the company's plea of guilty must be under the seal of the company or can be signed by a director on behalf of the company.

JOCESA.

Answer.

In our view the 1957 Act procedure does apply to limited company defendants but does not give the right to "plead by post" to anyone who cannot appear in person and plead. Since, therefore, a limited company can plead in court only through an advocate a notification in writing that a defendant company desires to plead guilty without appearing before the court must be signed by a solicitor acting on the defendant's behalf.

7.—Magistrates—*Practice and procedure—Defendant arrested on one charge—Should other charges be added on the charge sheet or ought informations to be laid?*

A man found in possession of a stolen motor car is arrested, taken to the police office where he is detained and charged with the offence of "larceny motor car" contrary to s. 2 of the Larceny Act, 1916. He is also charged alternatively with "taking the car without the owner's consent" contrary to s. 28 of the Road Traffic Act, 1930, and these offences are listed on the apprehension charge sheet. He is bailed to appear at court in respect to them.

In the course of the inquiries and before the prisoner is bailed, it is learned that the following other offences are disclosed:

1. Using uninsured motor vehicle contrary to s. 35 of the Road Traffic Act, 1930,
2. Being an unlicensed driver contrary to s. 4 of the Road Traffic Act, 1930, and
3. Motor vehicle—no lights contrary to s. 1 of the Road Traffic Act, 1957.

Can the prisoner legally be charged with the purely summary offences, which would be entered on the charge sheets before being bailed, thus obviating the need for the application of summonses to ensure his court attendance in respect to these other offences, or must the prisoner be reported for these offences and informations laid at a later date to have the necessary summonses issued?

I have in mind the Magistrates' Courts Rules, 1957, which indicate the procedure for bringing summary offences before the court and because of these rules I feel that informations must be laid as a correct procedure rather than the doubtful, though convenient, method of charging the prisoner with everything before releasing him on bail. Should offences on the charge sheet be limited to those for which a power of arrest exists including of course those offences involving a limited power of arrest, *i.e.*, dangerous driving; driver refusing to produce driving licence?

Your valuable advice on the correct procedure is requested and could you please quote any relevant case law.

K.A.D.

Answer.

We do not think that there is any need for informations to be laid. It is a common and convenient practice for additional charges to be added on the charge sheet and it does not matter whether they are in respect of offences for which there is no power of arrest. The defendant is not prejudiced by this procedure; on the contrary he gets thereby the earliest possible notice of the charges which he has to meet. He can always ask, when he appears in court, that the hearing be adjourned if he needs more time to prepare his defence.

We do not think that the case of *Blake* v. *Beech* (1876) 40 J.P. 678, which related to the rather special procedure under the Betting Act, 1853, prevents the above procedure being followed.

8.—Rates—*Distress warrant issued—Payment of money thereafter—No duty on clerk to receive it.*

I shall be grateful for your opinion as to whether payment of the money due for rates under an order made by the magistrates' court should be collected by me as the clerk of the court and the money recorded in my books or whether the clerk to the council can arrange for the payment of the money to him.

The collection of arrears of rates does involve considerable work especially having regard to the fact that the fees payable for summonses and order is only 4*s.* and it occurred to me that this work can be done by the clerk to the council.

KULIO.

Answer.

The procedure on an application for the enforcement of payment of rates is not that the court makes an order for their payment. The court authorizes the issue of a distress warrant. The procedure is not one to which the Magistrates' Courts Act, 1952, applies, and there is no requirement that the clerk of the court should be responsible for receiving money paid in satisfaction of the unpaid rate. Payments can, and should, be made to the rating authority.

9.—Road Traffic Acts—*Insurance—Pushing a motor-cycle which is in working order—Need for an insurance policy?*

I should be obliged by your opinion as to whether an offence of using a motor vehicle without insurance is committed under the following circumstances bearing in mind the decision of *Floyd* v. *Bush* (1953) 117 J.P. 88; [1953] 1 All E.R. 256. The defendant is in lawful possession of a motor-cycle in working order which is not insured and which he is not licensed to drive. He is alleged to have pushed the vehicle through the streets making no attempt to ride it.

KEWSO.

Answer.

We touched on this at the end of the article at 120 J.P.N. 327, "What is driving under the Road Traffic Acts?" We prefer the view that, if the machine is lawfully being pushed merely to move it from one place to another and there is no question of its being used as a vehicle to transport anyone, there is no use of a motor vehicle within the meaning of s. 35 of the Act of 1930 and no insurance policy is necessary.